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Arg'd.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 212

**THE DELAWARE AND HUDSON COMPANY, THE ALBANY
AND SUSQUEHANNA RAIL ROAD COMPANY, RENES-
LAER AND SARATOGA RAIL ROAD COMPANY, ET AL,
APPELLANTS,**

**THE UNITED STATES OF AMERICA AND THE
INTERSTATE COMMERCE COMMISSION**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK**

FILED NOVEMBER 2, 1925

(20,943)

(29,943)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 633

THE DELAWARE AND HUDSON COMPANY, THE ALBANY
AND SUSQUEHANNA RAIL ROAD COMPANY, RENSSE-
LAER AND SARATOGA RAIL ROAD COMPANY, ET AL.,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND THE
INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

INDEX

	Original	Print
Record from U. S. district court for the southern district of New York	1	1
Petition	1	1
Exhibit A to Petition—Order of I. C. C. establishing tentative valuations of properties of petitioners....	25	13
Exhibit B to Petition—Predecessors of the carrier, showing history, property, valuations, etc.....	118	114
Order to show cause.....	225	232
Intervention of I. C. C.....	228	233
Motion of respondent to dismiss.....	230	233
Motion of I. C. C. to dismiss.....	231	234
Minutes of hearing, June 28, 1923.....	234	235

INDEX.

	Original	Print
Affidavit of H. E. Hale.....	237	236
Affidavit of George H. Burgess.....	242	239
Exhibit in Evidence—Protest to I. C. C.....	248	242
Opinion	279	256
Final decree.....	288	259
Petition for appeal.....	290	260
Assignment of errors.....	292	261
Order allowing appeal.....	299	263
Notation as to bond.....	301	264
Citation and service.....(omitted in printing) ..	302	264
Order extending time.....	306	264
Præcipe for transcript of record.....	307	265
Clerk's certificate.....	309	266

[fol. a]

[Title omitted]

[File endorsement omitted]

[fol. 1] DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

In Equity

THE DELAWARE AND HUDSON COMPANY, THE RENSSELAER AND Saratoga Railroad Company, The Albany and Susquehanna Rail Road Company, Albany and Vermont Rail Road Company, Rutland and Whitehall Rail Road Company, Saratoga and Schenectady Rail Road Company, Northern Coal and Iron Company, The Ticonderoga Railroad Company, and The Chateaugay and Lake Placid Railway Company, Petitioners,

against

THE UNITED STATES OF AMERICA, Respondent

PETITION—Filed June 13, 1923

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The Delaware and Hudson Company, a corporation of the State of New York; The Rensselaer and Saratoga Railroad Company, a corporation of the State of New York; The Albany and Susquehanna [fol. 2] Rail Road Company, a corporation of the State of New York; Albany and Vermont Rail Road Company, a corporation of the State of New York; Rutland and Whitehall Rail Road Company, a corporation of the State of Vermont; Saratoga and Schenectady Rail Road Company, a corporation of the State of New York; Northern Coal and Iron Company, a corporation of the State of Pennsylvania; The Ticonderoga Railroad Company, a corporation of the State of New York, and The Chateaugay and Lake Placid Railway Company, a corporation of the State of New York, bring this their petition against the United States of America and hereby sue to enjoin, set aside, annul and suspend an order of the Interstate Commerce Commission, a commission existing by virtue of the Act of Congress of February 4, 1887, entitled "An Act to Regulate Commerce" and the acts amendatory thereof and supplementary thereto, and thereupon your petitioners complain and say:

I. At all times hereinafter mentioned the petitioners were and they are now corporations under the laws of the States aforesaid and own or use railroad property, portions of which are located in each of the three States of Pennsylvania, New York and Vermont, which said property is used in the transportation of passengers and freight within and among the States of the United States, and petitioners are com-

mon carriers engaged in such transportation and as such subject to the provisions of the Interstate Commerce Act.

II. This suit arises under the Constitution and laws of the United [fol. 3] States in that in making said order the Commission acted without authority of law and beyond its powers and jurisdiction and arbitrarily, and in that this suit is brought to enjoin, suspend and set aside an order of said Commission and is instituted under the authorization of the Interstate Commerce Act and of the Act of October 22, 1913, entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen and for other purposes" as well as under the general equity jurisdiction of this Court.

III. The Delaware and Hudson Company is a corporation organized and existing under the laws of the State of New York, and has its principal office in the Borough of Manhattan in the City of New York and in the Southern District and State of New York, and the order which this suit is brought to enjoin, suspend and set aside does not relate either to transportation or to a matter complained of before the Commission.

IV. Section 19a of the Interstate Commerce Act, as amended, at all times hereinafter referred to, read, and now reads, in full as follows:

"Sec. 19a. [As amended February 28, 1920, and June 7, 1922.] (a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be [fol. 4] necessary. The Commission may appoint examiners who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall make an inventory which shall list the property of every common carrier subject to the provisions of this Act in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

(b) First. In such investigation said Commission shall ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values.

Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purpose of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same.

Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, [fol. 5] and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

Fourth. In ascertaining the original cost to date of the property of such common carrier the Commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corporation operating such property; upon any increases or decreases of stocks, bonds, or other securities, in any reorganization; upon moneys received by any such corporation by reason of any issues of stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the Commission upon the expenditure of all moneys and the purposes for which the same were expended.

Fifth. The Commission shall ascertain and report the amount and value of any aid, gift, grant of right of way, or donation, made to any such common carrier, or to any previous corporation operating such property, by the Government of the United States or by any State, county or municipal government, or by individuals, associations, or corporations; and it shall also ascertain and report the grants of land to any such common carrier, or any previous corporation operating such property, by the Government of the United States, or by any State, county, or municipal government, and the amount of money derived from the sale of any portion of such grants and the value of the unsold portion thereof at the time acquired and [fol. 6] at the present time, also, the amount and value of any concession and allowance made by such common carrier to the Government of the United States, or to any State, county or municipal government in consideration of such aid, gift, grant, or donation.

(c) Except as herein otherwise provided, the Commission shall have power to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted, and the classification of the elements that constitute the ascertained value, and such investigation shall show the value of the property of every common carrier as a whole and separately the value of its property in each of the several States and Territories and the District of Columbia, classified and in detail as herein required.

(d) Such investigation shall be commenced within sixty days after approval of this Act and shall be prosecuted with diligence and

thoroughness, and the result thereof reported to Congress at the beginning of each regular session thereafter until completed.

(e) Every common carrier subject to the provisions of this Act shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the Commission free access to its right of way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every [fol. 7] common carrier is hereby directed and required to co-operate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section twenty of this Act shall have the full force and effect of law. Unless otherwise ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.

(f) Upon the completion of the valuation herein provided for the Commission shall thereafter in like manner keep itself informed of all extensions and improvements or other changes in the condition and value of the property of all common carriers, and shall ascertain the value thereof, and shall from time to time, revise and correct its valuations, showing such revision and correction classified and as a whole and separately in each of the several States and Territories and the District of Columbia, which valuation, both original and corrected, shall be tentative valuations and shall be reported to Congress at the beginning of each regular session.

(g) To enable the Commission to make such changes and corrections in its valuations of each class of property, every common carrier subject to the provisions of this Act shall make such reports and furnish such information as the Commission may require.

(h) Whenever the Commission shall have completed the tentative valuation of the property of any common carrier, as herein directed, and before such valuation shall be come final, the Commission shall give notice by registered letter to the said carrier, the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the Commission may prescribe, stating the valuation placed upon the several classes of property of said carrier, and shall allow thirty days in which to file a protest of the same with the Commission. If no protest is filed within thirty days, said valuation shall become final as of the date thereof.

(i) If notice of protest is filed the Commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be

presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this Act the Commission shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the Commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under the Act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the Act approved February fourth, eighteen hundred and eighty-seven, commonly known as "the Act to regulate commerce," and the various Acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

[fol. 9] (j) If upon the trial of any action involving a final value fixed by the Commission, evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the Commission, or additional thereto and substantially affecting said value, the court, before proceeding to render judgment shall transmit a copy of such evidence to the Commission, and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence the Commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend or rescind any order which it has made involving said final value, and shall report its action thereon to said court within the time fixed by the court. If the Commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the Commission in the first instance. If the original order shall not be rescinded or changed by the Commission, judgment shall be rendered upon such original order.

(k) The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with all the requirements of this section and in the manner prescribed by the Commission such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in section sixteen of the Act to regulate commerce.

(l) That the district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this section by any common carrier, to issue a writ or writs of mandamus command-

ing such common carrier to comply with the provisions of this section."

V. On March 28, 1923, the Interstate Commerce Commission, and Division 1 of said Commission, in a proceeding entitled and known as "Valuation Docket Number 328," entered an order, a copy of which is attached hereto, marked "Exhibit A," and made a part hereof. Said order was thereafter served upon your petitioners (and petitioners had no knowledge of said order until said service), and, as petitioners are informed and believe, upon the Attorney General of the United States, the Governor of New York, the Governor of Pennsylvania, the Governor of Vermont, the Public Service Commission of New York, the Public Service Commission of Pennsylvania, the Public Service Commission of Vermont, the National Association of Railway and Utilities Commissions, and others. The first paragraph of said order is, in full, as follows:

"It is ordered, That the following be, and they are hereby declared to be, the tentative valuations of the properties of The Delaware [fol. 11] and Hudson Company, The Albany and Susquehanna Rail Road Company, Saratoga and Schenectady Rail Road Company, Albany and Vermont Rail Road Company, Rutland and Whitehall Railroad Company, Saratoga and Schenectady Railroad Company, Northern Coal and Iron Company, The Ticonderoga Railroad Company, The Chateaugay and Lake Placid Railway Company, and The Plattsburgh and Dannemora Railroad, as of June 30, 1916.

Said order purports to establish a tentative valuation and tentative valuations, in pursuance of said Section 19a, in respect of the properties owned or used by your petitioners on June 30, 1916.

VI. Said Commission had not on or prior to said March 28, 1923, and has not at any time, ascertained or reported, in detail or otherwise, as to each piece of property other than land, owned or used for common carrier purposes by petitioners, or any of them, the original cost to date of said piece of property, and said order does not report, or purport to report, any original cost to date, as aforesaid, and said Commission has always refused, and now refuses, to investigate, or to ascertain or report, such original cost to date, saving and excepting that to the extent that said Commission has considered that such original cost to date is exactly shown or established by the books and records of petitioners or by other books or records, said order does report the facts which said Commission has considered so to be shown or established, but to the extent that such original cost to date is so reported, the report and statements of fact are incomplete and [fol. 12] fragmentary and represent only a small portion or fraction of the property and properties owned or used for common carrier purposes by petitioners, and each of them.

VII. Said Commission had not, on or prior to said March 28, 1923, and has not at any time, investigated, ascertained or reported, in detail and separately from improvements or otherwise, the original

cost of all or of any lands, rights-of-way, and terminals, owned or used for common carrier purposes by petitioners, and ascertained as of the time of dedication to public use, and said order does not report, or purport to report, any such original cost; and said Commission has always refused, and now refuses, to investigate or to ascertain or report such original cost; saving and excepting that, to the extent that said Commission has considered that such original cost is exactly shown or established by the books and records of petitioners or by other books or records, said order does report the facts which said Commission has considered so to be shown or established; but, to the extent that such original cost is so reported, the report and statements of fact are incomplete and fragmentary and represent only a small portion or fraction of the lands, rights-of-way, and terminals owned or used for common carrier purposes by petitioners.

VIII. Said order does not include or report, or purport to report, and said Commission has not reported an analysis of the methods by which the several costs; namely, original cost to date, the cost of [fol. 13] reproduction new, and the cost of reproduction less depreciation; were obtained by said Commission in respect of any property of petitioners, to the extent that any such costs were obtained or otherwise, and said order does not contain or report, and said Commission has not reported, the reason or reasons for the differences between and among said costs or any of them, to the extent that any such costs were obtained or otherwise.

IX. Said order does not include or report, or purport to report, and said Commission has not ascertained or reported, in respect of any property of petitioners, separately or otherwise, any other values or any elements of value, except original cost to date, cost of reproduction new and cost of reproduction less depreciation, to the extent that such costs have been ascertained and reported, and said order does not contain or report, and said Commission has not reported, any reason or reasons for any difference or differences between any such value or other value or element of value and each or any of the said cost values, but said Commission has always refused and now refuses to investigate or to ascertain or report any other values and any elements of value, as aforesaid, in respect of any such property, or to make or report any such analysis of the methods of valuation employed or to state or report any such reasons for any such differences.

X. Said order does not include or report, or purport to report, and said Commission has not investigated or ascertained or reported, separately or otherwise, the original cost and present value, or either [fol. 14] original cost or present value, of the property or properties, or of any property, held by petitioners, or any of them, for purposes other than those of a common carrier, but said Commission has always refused, and now refuses, to investigate or report original cost and present value, or either of them, in respect of said property.

XI. Said order does not show or report, or purport to report, the value of the property or properties of petitioners, or any of petitioners, as a whole, classified and in detail or otherwise, and said Commission has always refused, and now refuses, to investigate or to ascertain or report the value as a whole of said property or properties.

XII. Said order does not show or report, or purport to report, separately, the value, as a whole, of the property or properties of petitioners, or any of petitioners, classified and in detail or otherwise, in any State, and said Commission has always refused, and now refuses, to investigate or ascertain or report the value, as a whole, of said property in any State.

XIII. On said June 30, 1916, petitioner, The Delaware and Hudson Company, used, and said petitioner still uses, for its purposes as a common carrier in interstate commerce, and as part of the main line of the system of railroads operated by said petitioner for such common carrier purposes, a certain double-track railroad, or portion of railroad, about 35.01 miles in length, together with lands, rights-of-[fol. 15] way, tracks, side tracks, stations, signaling apparatus, and all other appurtenances except equipment, commonly a part of any railroad, located between Carbondale and Jefferson Junction, both in the State of Pennsylvania, which said railroad, or portion of railroad, is owned by Erie Railroad Company and is used by said petitioner under a certain agreement, duly made and entered into on about January 1, 1898, under which said petitioner is entitled to use said railroad, or portion of railroad, throughout a period of one hundred years, beginning with said January 1, 1898, and does actually use said railroad or portion of railroad jointly with said Erie Railroad Company. Although said railroad or portion of railroad is essential to the common carrier operations of said petitioner, said order does not report, or purport to report, the value thereof, or the cost of reproduction new thereof, or the cost of reproduction less depreciation thereof, and does not classify the physical property thereof, in conformity with the classification of expenditures for road and equipment established by said Interstate Commerce Commission or otherwise, but said Commission has always refused, and does now refuse, to include said railroad, or portion of railroad, in any value or cost reported in said order, or to classify its property therein, as aforesaid, claiming and representing that said railroad, or portion of railroad, should be excluded from valuation in accordance with Section 19a as part of the railroad or property owned or used by said petitioner and that said railroad, or portion of railroad, has been or should be exclusively included and represented in the valuation of some other railroad, in which your petitioners have no interest.

[fol. 16] XIV. Your petitioner, The Delaware and Hudson Company, used, jointly with other carriers subject to the Interstate Commerce Act, on said June 30, 1916, for its purposes as a common carrier, various and sundry other railroad property, that is to say, railroads, or portions of railroads, and pieces of railroad property, including among other property, railroads, or portions of railroads, between

(1) Troy and Eagle Bridge, both in the State of New York; (2) Mechanicsville and Eagle Bridge, both in the State of New York; (3) Crescent and Coons, both in the State of New York; (4) Coons and the west end of Mechanicsville, both in the State of New York; (5) Hudson and Union Junction, both in the State of Pennsylvania; (6) Binghamton and Owego, both in the State of New York; (7) South Wilkes-Barre and Wilkes-Barre, both in the State of Pennsylvania; (8) Buttonwood and Hudson, both in the State of Pennsylvania, and certain railroad and terminal property located in the City of Troy, in the State of New York; all said railroads, or parts of railroads, herein specifically enumerated, having together an aggregate length of 117.21 miles (which said length in miles does not include other property referred to in this paragraph). Although all property referred to in this paragraph is essential to the common carrier operations of said petitioner, said order does not report, or purport to report, the value thereof, or the cost of reproduction new thereof, or the cost of reproduction less depreciation thereof, and does not classify said physical property as required by said Section 19a, but said Commission has always refused, and now refuses, to include said property, or any part thereof, in any value or cost reported in said order, or to classify said property therein, as aforesaid, claiming and representing that said property should be excluded from valuation as property used by said petitioner and exclusively included and represented in the valuation of some other railroad, or railroads, in which your petitioners have no interest.

XV. Although said order purports to establish or to report a tentative valuation or tentative valuations in respect of the property and properties, or some of the property or properties, owned or used by petitioners on June 30, 1916, and purports to establish or to report the cost of reproduction new of such property, and parts and pieces of such property and properties, the prices applied to the quantities or units of said property or properties or pieces of property are not the prices existing or current or in use on said June 30, 1916, and do not purport to be the prices of said date, but purport to be the prices of June 30, 1914, and of some period ending on or prior to said June 30, 1914, and said Commission has always refused, and now refuses, to apply to any of said property or properties or pieces of property owned or used on June 30, 1916, as aforesaid, by petitioners, the actual and existing and current prices of said June 30, 1916, although said actual and existing and current prices of said June 30, 1916, were materially higher than and different from the prices used by said Commission.

XVI. Said Commission has not investigated, or ascertained or reported, and said order does not report, or purport to report, the [fol. 18] amount, or value, original cost to date, or cost of reproduction less depreciation, of the working capital owned or used by petitioners, or any of them, for their purposes as common carriers, on June 30, 1916, or at any other time, and said Commission has made no inventory of the property or properties of petitioners, or any of them, which includes such working capital, or the materials and sup-

plies on hand on said June 30, 1916, or at any other time, but has always refused, and now refuses, to make any such inventory which shall include such working capital and materials and supplies, or to investigate, or to ascertain or report, any such amount or value or cost; but has arbitrarily undertaken to fix the amount and value of working capital which said petitioners ought to have had on hand on said June 30, 1916, by the use of a formula, and from deductions and conclusions drawn from facts which have no relation to working capital, or to the working capital of petitioners, or any of them. Said Commission has reported in said order, that the application of said formula has resulted in a "readjusted percentage for this carrier," which readjusted percentage "is 13.4 which applied to annual operating expenses of \$16,381,589, closely approximating the trend for a period of five years prior to valuation date, results in the sum of \$2,195,100, the amount necessary for the carrier's use as working capital," and upon said basis, said Commission has, in said order, reported \$2,195,100, as the whole amount of working capital used by petitioners for their common carrier purposes on said June 30, 1916, although in fact said petitioners had, on said date, and used for their common carrier purposes, a very much larger amount of working capital.

[fol. 19] XVII. Said Commission claims and represents that said order is and constitutes and contains a "tentative valuation" or tentative valuations, within the intendments of said Section 19a, of the property and properties owned or used by petitioners, and petitioners are informed and believe and therefore aver that said Commission has planned and prepared and intends to proceed upon said order as upon such a tentative valuation, or tentative valuations; and, unless said order is enjoined, suspended or set aside by the order of this Court, will proceed as aforesaid, and will, thereupon, enter an order declaring and fixing a final value in respect of said property and properties of the petitioners, and will apply and use the amount or value or final value so fixed as prima facie evidence of the value of the property and properties of petitioners, in proceedings under the Act to Regulate Commerce and the Interstate Commerce Act before said Commission, and in the fixing of rates by said Commission under said Act and under Section 15 and Section 15a thereof, and will offer and use said amount or value or final value as prima facie evidence, as aforesaid, in proceedings now pending and hereafter to be pending in the Federal courts; and petitioners will thereby suffer great injury and material damage and will incur great and irreparable loss and their property and properties will be taken without due process of law and for public use without just compensation.

XVIII. Petitioners are advised and believe and therefore aver that said order is not and does not constitute or contain or establish any [fol. 20] tentative valuation or tentative valuations, within the intendments of said Section 19a, and for the following reasons, among others, that is to say:

1. It was not preceded by the investigation prescribed by said Section 19a and is not based upon the results or record of any such investigation.

2. Said Commission refused to include large amounts of property owned or used by petitioners.

3. Said Commission refused to apply and use, or to attempt to apply or use, the actual and current prices prevailing on the date of the inventory or inventories on which it relied.

4. Said Commission refused to value the actual working capital of petitioners but instead of so doing reported a value arbitrarily resulting from the use of an arbitrary general formula.

5. It does not purport to contain a report of the original cost to date of the property used for common carrier purposes.

6. It does not purport to contain a report of the original cost of the lands, rights-of-way, and terminals used for common carrier purposes, ascertained as of the time of dedication to public use or otherwise.

7. It does not purport to contain a report of the original cost, or the present value, of the property held for purposes other than those of a common carrier.

8. It does not purport to contain a report of the value of the property or properties as a whole.

[fol. 21] 9. It does not purport to contain a report of the value of the property or properties as a whole in each, or any, of the separate States in which located.

10. It does not purport to contain a report of other values and elements of value that are not included in the several costs enumerated in said Section 19a.

11. It does not purport to include an analysis of the methods by which the several costs were ascertained or the reasons for their differences.

12. It does not purport to include an analysis of the methods of valuation employed or the reasons for the differences between other values and elements of value and the cost values or any of them.

13. It does not purport to contain an analysis of the methods of valuation employed in respect of property held for purposes other than those of a common carrier.

XIX. Petitioners are advised and believe and therefore aver that a lawful order fixing a "tentative valuation," within the intendments of said Section 19a, would have the practical and legal effect of setting in motion, under said Section 19a, and in accordance with said Interstate Commerce Act, a proceeding or process, at the beginning of which, as a means and reliance necessary and essential to the pro-

tection of the parties thereto, said parties require, and are entitled to have, a lawful tentative valuation; that the legal effect of a tentative valuation is that it becomes the foundation of such proceeding or [fol. 22] process and constitutes and establishes a *prima facie* case as against all parties affected, placing upon said parties the burden of showing or proving that any changes therein should be made or that any different values or conclusions or any different final value should be fixed and that in such proceeding or process said Commission is required to hear and consider, and will hear and consider, only matter relative and material which may be presented in support of some protest or protests to such tentative valuation; that without a lawful tentative valuation petitioners are not sufficiently advised concerning the character of the *prima facie* case which they would be required to meet to protect their rights by an adequate and proper and sufficiently full and detailed protest, and by the presentation of matter in support thereof; that if said proceeding or process takes place, or is begun, without the foundation of a lawful tentative valuation, no lawful tentative valuation can or will ever be made and petitioners will be without remedy at law or otherwise, and that if such proceeding or process is permitted to be based upon said order of March 28, 1923, petitioners will be unable to protect their great and valuable interests in said proceeding or process, and will suffer material and irremediable loss and injury.

XX. Said order of the Interstate Commerce Commission (Exhibit A) is null and void, and of no legal effect, for the reasons set forth in paragraphs VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII and XIX, of this petition, and for other reasons, and is arbitrary and unlawful and contrary to the express provisions and [fol. 23] manifest intendments of said Section 19a, and in contravention of any, and of all, the authority conferred upon said Commission by said Section 19a and by said Interstate Commerce Act.

In consideration whereof and forasmuch as your petitioners are remediless in the premises at and by the strict rules of the common law and to the end that they may obtain the relief to which they are entitled, your petitioners now pray:

First. A permanent injunction decreeing that said order of the Interstate Commerce Commission be set aside, annulled, and suspended, and that its enforcement, operation and execution, and the entry of any order based thereon fixing any final value, and the entry of any order fixing final value before a lawful tentative valuation has been made, and the use of any final value based upon said order by said Commission in any proceeding before said Commission and by said Commission in any judicial proceeding, be forever enjoined.

Second. An interlocutory injunction suspending and restraining the enforcement, operation and execution of said order, in whole or in part and setting the same aside.

Third. Such other and further relief as to justice and equity may appertain.

Walter C. Noyes, H. T. Newcomb, Solicitors for Petitioners.

[fol. 24] Jurat showing the foregoing was duly sworn to by L. F. Loree; omitted in printing.

[fol. 25]

[File endorsement omitted]

EXHIBIT A TO PETITION—Filed June 13, 1923

Part 1 of 2 Parts

Interstate Commerce Commission

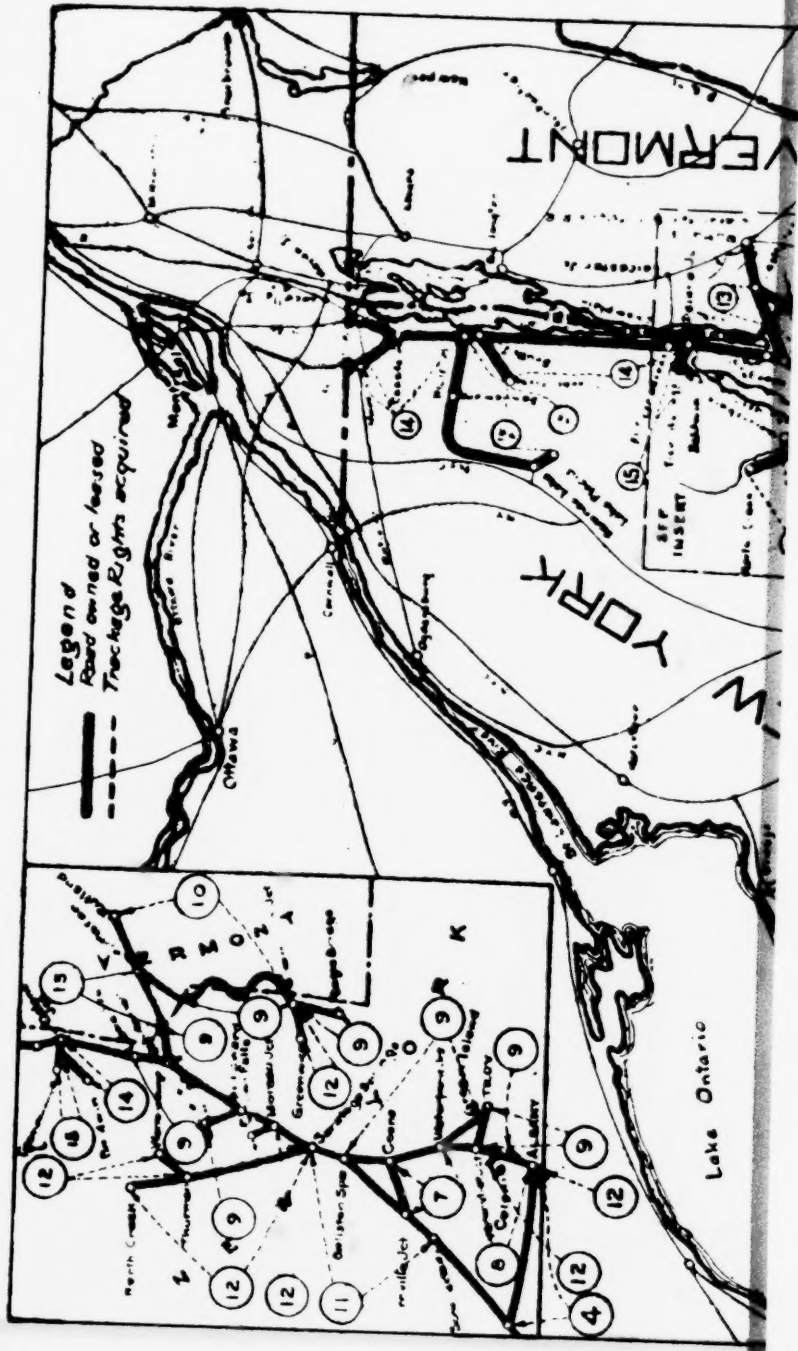
Washington, D. C.

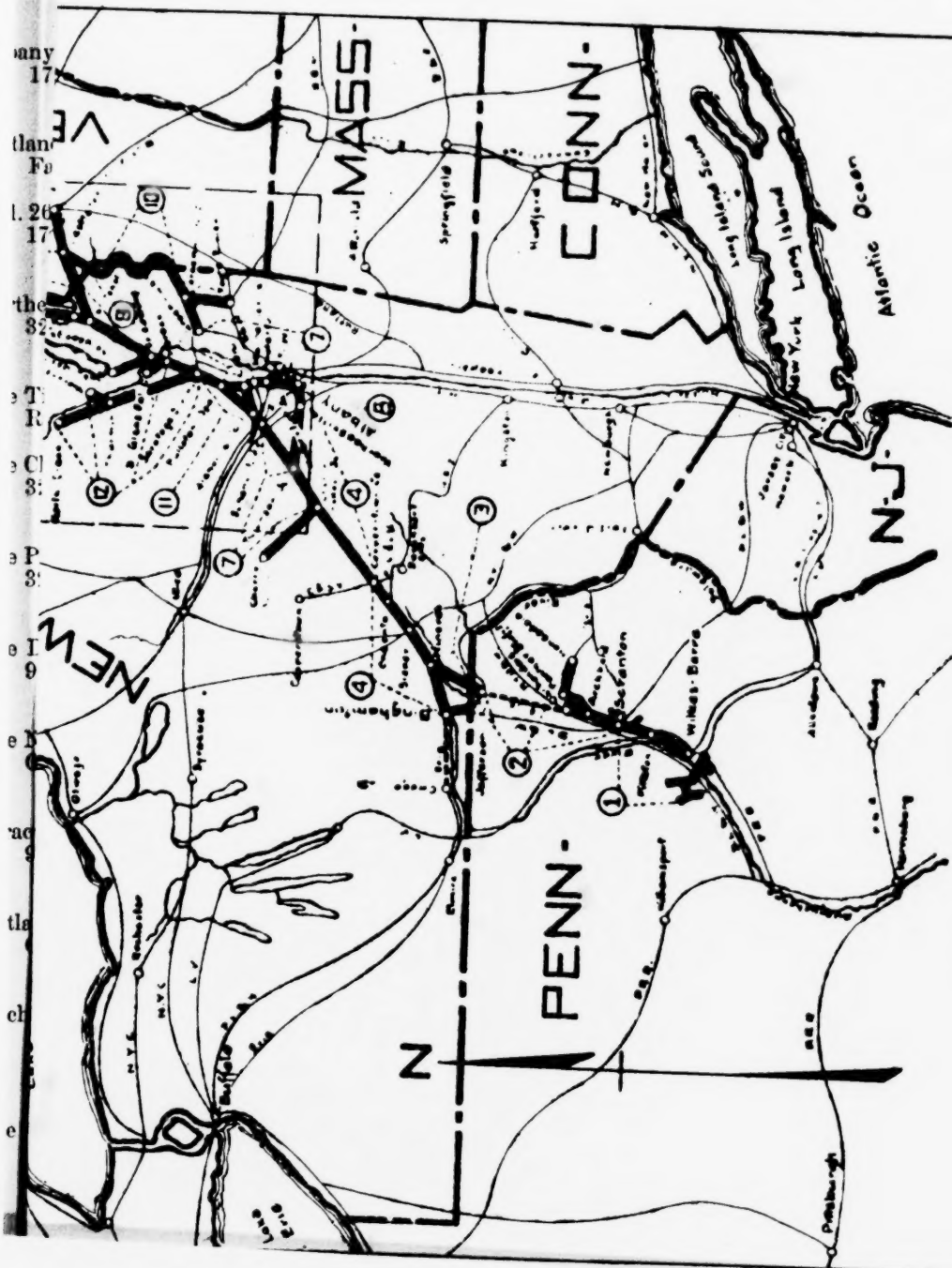
Valuation Docket No. 328

March 28, 1923.

The Honorable the Attorney General of the United States;
 The Honorable the Governor of New York,
 Albany, N. Y.;
 The Honorable the Governor of Pennsylvania,
 Harrisburg, Penn.;
 The Honorable the Governor of Vermont,
 Montpelier, Vt.;
 New York Public Service Commission,
 Albany, N. Y.;
 Public Service Commission,
 Harrisburg, Penn.;
 Vermont Public Service Commission,
 Brattleboro, Vt.;
 National Association of Railway and Utilities Commissioners,
 810 Eighteenth Street, N. W.,
 Washington, D. C.,
 Care John E. Benton, General Solicitor;
 The Delaware and Hudson Company,
 32 Nassau Street,
 New York, N. Y.,
 Care W. E. Eppler, Comptroller;
 The Albany and Susquehanna Rail Road Company,
 7 Wall Street,
 New York, N. Y.,
 Care C. F. Coaney, Asst. Treas.;
 The Rensselaer and Saratoga Railroad Company,
 17 First Street,
 Troy, N. Y.,
 Care S. S. Bullions, Treas.;

- Albany and Vermont Rail Road Company,
17 First Street,
Troy, N. Y.,
Care S. S. Bullions, Treas. ;
- Rutland and Whitehall Rail Road Company,
Fair Haven, Vt.,
Care F. E. Allen, Clerk ;
- [fol. 26] Saratoga and Schenectady Rail Road Company,
17 First Street,
Troy, N. Y.,
Care S. S. Bullions, Treasurer ;
- Northern Coal and Iron Company,
32 Nassau Street,
New York, N. Y.,
Care W. E. Eppler, Comptroller ;
- The Ticonderoga Railroad Company,
Rutland, Vt.,
Care C. H. Harrison, Treasurer ;
- The Chateaugay and Lake Placid Railway Company,
32 Nassau Street,
New York, N. Y.,
Care W. E. Eppler, Comptroller ;
- The Plattsburgh and Dannemora Railroad,
32 Nassau Street,
New York, N. Y.,
Care W. E. Eppler, Comptroller ;
- The Delaware, Lackawanna & Western Railroad Company,
90 West Street,
New York, N. Y.,
Care G. E. Hustis, Comptroller ;
- The New York Central Railroad Company,
Grand Central Terminal,
New York, N. Y.,
Care W. C. Wishart, Comptroller ;
- Syracuse, Birmingham & New York Railroad Company,
90 West Street,
New York, N. Y.,
Care G. E. Hustis, Comptroller ;
- Rutland Railroad Company,
Grand Central Terminal,
New York, N. Y.,
Care W. C. Wishart, Comptroller ;
- Fitchburg Rail-Road Company,
Care Boston and Maine Railroad,
Wm. S. Trawbridge, Comptroller,
North Station,
Boston, Mass. ;
- The Coonerstown and Charlotte Valley Rail-Road Company,
32 Nassau Street,
Care W. E. Eppler, Comptroller ;





INTERSTATE COMMERCE COMMISSION
BUREAU OF VALUATION
MAP TO ACCOMPANY REPORT UPON
THE DELAWARE & HUDSON COMPANY
AS OF JUNE 30, 1916

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[fol. 27] You are hereby notified that the Interstate Commerce Commission has completed the tentative valuations of the properties of The Delaware and Hudson Company; The Albany and Susquehanna Rail Road Company; The Rensselaer and Saratoga Railroad Company; Albany and Vermont Rail Road Company; Rutland and Whitehall Rail Road Company; Saratoga and Schenectady Rail Road Company; Northern Coal and Iron Company; The Ticonderoga Railroad Company; The Chateaugay and Lake Placid Railway Company; and The Plattsburgh and Dannemora Railroad, as of June 30, 1916, and that said valuations are set forth in the tentative valuation report which is included in the order adopting the same, a copy of which is attached to this notice and made a part hereof.

You are required to file with the Commission at its office in Washington on or before thirty (30) days from the 12th day of April, 1923, any protest which you may desire to make to such valuation or to any part of such valuation.

You will file in connection with such protest specification setting forth in detail each particular thing against which the protest is directed.

You are further required to transmit a copy of such protest to each of the other parties to whom this notice is addressed and to file with the Commission for its official use twenty-five (25) additional copies of the same.

By the Commission, Division 1.

George B. McGinty, Secretary.

(Here follows map, marked side folio page 28)

[fol. 29]

ORDER

AT A SESSION OF THE INTERSTATE COMMERCE COMMISSION, DIVISION 1, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 28TH DAY OF MARCH, A. D. 1923.

Valuation Docket No. 328

THE DELAWARE AND HUDSON COMPANY, THE ALBANY AND SUSQUEHANNA Rail Road Company, The Rensselaer and Saratoga Rail Road Company, Albany and Vermont Rail Road Company, Rutland and Whitehall Rail Road Company, Saratoga and Schenectady Rail Road Company, Northern Coal and Iron Company, The Ticonderoga Railroad Company, The Chateaugay and Lake Placid Railway Company, The Plattsburgh and Dannemora Railroad.

It is ordered, That the following be, and they are hereby declared to be, the tentative valuations of the properties of The Delaware and Hudson Company, The Albany and Susquehanna Rail Road Company, The Rensselaer and Saratoga Railroad Company, Albany and

Vermont Rail Road Company, Rutland and Whitehall Rail Road Company, Saratoga and Schenectady Rail Road Company, Northern Coal and Iron Company, The Ticonderoga Railroad Company, The Chateaugay and Lake Placid Railway Company, and The Plattsburgh and Dannemora Railroad, as of June 30, 1916:

Abbreviated Names.—A schedule showing the abbreviated names for certain corporations herein mentioned will be found at the close of the report.

The Delaware and Hudson Company

Location and General Description of Property.—The railroad of The Delaware and Hudson Company, hereinafter called the carrier, is a partly double track, standard gauge, steam railroad, the owned mileage of which is located in the states of Pennsylvania and New York, and the Dominion of Canada. Only that portion located in the United States is included in this report. The operated main line extends from its southern terminus at Buttonwood, near Wilkes-Barre, Penn., in a general northerly direction to Ninevah, N. Y., and from Owego, its most westerly terminus, to Albany, N. Y. From the last named point its main line passes northerly through the cities of Troy, Saratoga Springs, Whitehall, and Plattsburgh, reaching the international boundary line, in two branches from Canada Junction, at Mooers Junction and Rouses Point, N. Y. In addition, the carrier has many branch lines, the most important of which extend from Albany in a northerly direction, and from Whitehall in an easterly direction into Vermont, meeting at Castleton, Vt., and terminating at Rutland, the most easterly terminus. Two other branch lines extend from Saratoga Springs and Plattsburgh, the former northerly to North Creek, and the latter westerly and southerly to Lake Placid, N. Y.

The following is a summary of the mileage owned and used and used but not owned by the carrier for common-carrier purposes:

Classification	First main track	Second and other main tracks	Yard tracks and sidings	All tracks
Wholly owned and used.....	342.258	69.435	219.873	631.566
Used but not owned:				
Leased from the:				
Albany	142.441	94.537	159.484	396.462
Rensselaer	153.704	59.626	103.591	316.921
Saratoga	20.806	11.394	45.375	77.575
Rutland	6.833	.....	2.205	9.038
Vermont	12.273	12.217	17.682	42.172
Northern	29.284	34.330	60.476	124.090
Placid	63.485	.....	27.228	90.713
Dannemora	16.336	.....	7.969	24.305
Ticonderoga	0.587	.....	2.537	3.124
Total	445.749	212.104	426.547	1,084.400
Grand total owned.....	342.258	69.435	219.873	631.566
Grand total used.....	788.007	281.539	646.420	1,715.966

[fol. 30]	Classification	First main track	Second and other main tracks	Yard tracks and sidings	All tracks
By States:					
In New York:					
Wholly owned and used.....		288.350	25.562	119.084	432.996
Used but not owned:					
Leased from the:					
Albany		142.441	94.537	159.484	396.462
Vermont		12.273	12.217	17.682	42.172
Rensselaer		120.630	59.626	92.497	272.753
Saratoga		20.806	11.394	45.375	77.575
Ticonderoga		0.587	.....	2.537	3.124
Placid		63.485	.....	27.228	90.713
Dannemora		16.336	.....	7.969	24.305
Total		376.558	177.774	352.772	907.104
Grand total owned.....		288.350	25.562	119.084	432.996
Grand total used.....		664.908	203.336	471.856	1,340.100
In Pennsylvania:					
Wholly owned and used.....		53.908	43.873	100.789	198.570
Used but not owned:					
Leased from the:					
Northern		29.284	34.330	*60.476	*124.090
Total owned.....		53.908	43.873	100.789	198.570
Total used.....		83.192	78.203	161.265	322.660
[fol. 31] In Vermont:					
Used but not owned:					
Leased from the:					
Rensselaer		33.074	.....	11.094	44.168
Ruthall		6.833	.....	2.205	9.038
Total used.....		39.907	.....	13.299	53.206

In Appendix 1 will be found a general description of the property of the carrier.

Jointly Used Property.—A statement of the common-carrier property other than land, owned and used jointly by the carrier with other companies, is given elsewhere in this order, under the caption Cost of Reproduction New and Cost of Reproduction Less Depreciation.

Traffic Connections.—The traffic connections will be found in Appendix 1.

*Includes 0.445 miles of yard tracks and sidings jointly owned with The Delaware, Lackawanna & Western Railroad Company.

Physical Conditions Affecting Construction.—In Appendix 1 are statements as to the topography, geology, and climate, as affecting the construction of the carrier's railroad.

Economic Conditions Relating to Traffic.—In Appendix 1 will be found statements showing the agricultural and industrial development of the territory traversed by the railroad of the carrier.

Corporate History.—The carrier was incorporated as The President, Managers and Company of the Delaware and Hudson Canal Company, under a special act of New York approved April 23, 1823, and was organized on the same date. This corporate title was changed to the present designation by a special act of New York approved April 28, 1899, which also authorized it to abandon the canal, but continued the previous corporation in all other respects. Under the original act the carrier was authorized to purchase from Maurice Wurts the rights and privileges previously granted him under a special act of Pennsylvania, approved March 13, 1823, which authorized him to improve the navigation of the Lackawaxen River, and to purchase from Wurts and others, lands containing stone coal, at or near the head waters of that river. This act also gave the carrier authority to employ its capital in the business of transporting to market the coal purchased. By subsequent amendment, approved April 5, 1826, the carrier was authorized by the state of Pennsylvania to construct, and maintain railways from its coal lands to the canal. The state of New York authorized the carrier, by an amendment to the original act approved May 9, 1867, to construct, own, maintain or lease railroads for its use. By an amendment to the original act, approved November 19, 1824, the state of New York authorized the carrier to employ \$500,000 of its capital actually paid in, in the business of banking, authorizing it to issue bills and notes, as hereinafter described.

The principal operating and accounting offices of the carrier are located at Albany, and its principal financial office at New York, N. Y.

[fol. 32] The corporations whose franchises and properties have gone to make up the present company, and the dates of the changes in those several corporations, are set forth in Appendix 2.

The detailed facts as to the development of fixed physical property are given in Appendix 2.

History of Corporate Financing.—The carrier has issued and assumed a total of \$150,602,296.28 in stocks, bonds and other long-term debt of which \$106,127,600 was outstanding on date of valuation. Of the securities outstanding, \$42,502,600 are in common stock and \$63,625,000 in first-mortgage and other bonds.

The carrier has also issued a total of \$155,829,247.33 in short-term notes, of which \$2,703,533.51 were outstanding on date of valuation.

The purposes for which the capital securities were issued and the apparent considerations received therefor, and other facts pertinent to the capitalization of the carrier, are given in Appendix 2.

Gross and Net Earnings of the Carrier.—The result of the corporate operations of the carrier from October 29, 1821, to date of

valuation, is stated in detail in Appendix 2, and is summarized as follows:

Gross earnings (railway operating revenues)	\$519,628,107.26
Operating expenses (railway operating expenses)	344,672,779.13

Resulting in net earnings (net revenues from railway operations) of	174,955,328.13
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During the same period taxes assessed (railway tax accruals) amounted to	\$6,538,930.88
Uncollectible railway revenues amounted to	2,680.57
	<u>6,541,611.45</u>

Resulting in an income from railway operations (railway operating income) of	168,413,716.68
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In addition to this there were net revenues from miscellaneous operations of	130,196,188.22
Taxes on miscellaneous operating property of	3,167,265.76
	<u>127,028,922.46</u>

Also income from nonoperating sources (nonoperating income) of	41,639,676.55
	<u>168,668,599.01</u>

Resulting in gross income for the period (gross income) of	337,082,315.69
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During this period rents and hire of equipment (chargeable to deductions from gross income) amounted to	99,273,578.10
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[fol. 33] Resulting in an amount available for the payment of interest and dividends, and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income), of	237,808,737.59
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During the years 1833, 1834, 1840 to 1876, inclusive, and 1881 to date of valuation, inclusive, cash dividends were paid at rates varying from $3\frac{1}{2}$ to 20 per cent, to the aggregate amount of \$122,016,674. In addition, stock dividends were distributed during the years 1857, 1865 and 1866, at rates varying from 4 to $16\frac{2}{3}$ per cent, to the aggregate amount of \$2,787,900, and during the years 1848, 1868 and 1890, stock was distributed to stockholders at rates of discount varying from $5\frac{3}{5}$ to 40 per cent, equivalent to the issuing of stock

dividends for the amount of the discount, to the aggregate amount of \$3,817,410.

General Balance Sheet.—The general balance sheet stated by the carrier, as showing its financial condition on date of valuation, follows:

Assets		
Investments:		
Investment in road and equipment	\$68,642,567.68	
Improvements on leased railway property	19,506.01	
Sinking funds	3,304,771.41	
Deposits in lieu of mortgaged property sold	15,908.24	
Miscellaneous physical property	10,280,864.44	
Investments in stocks	23,504,733.57	
Investments in bonds	920,900.00	
Investment in advances	19,374,444.50	
Investments—miscellaneous	5,701,634.27	
Total		\$131,765,330.12
Current assets:		
Cash	1,332,542.44	
Time drafts and deposits	941,291.75	
Special deposits	836,833.88	
Loans and bills receivable	6,828.88	
Traffic and car-service balances receivable	601,015.15	
Net balance receivable from agents and conductors	273,021.99	
Miscellaneous accounts receivable	3,515,931.71	
Materials and supplies	2,323,040.89	
Interest and dividends receivable	184,055.73	
Rents receivable	51,977.56	
Total		10,066,539.98
[fol. 34] Deferred assets:		
Working fund advances	436,577.99	
Insurance and other funds	552,788.53	
Other deferred assets	626,317.10	
Total		1,615,683.62

Unadjusted debits:

Rents and insurance premiums paid in advance	62,567.30
Discount on funded debt	16,108.70
Other unadjusted debits	207,610.09

Total	286,286.09
Grand total	143,733,839.81

Stock:

Capital stock:

Book liability	\$42,503,000
Held by or for carrier	400
Total	\$42,502,600.00

Long-term debt:

Funded debt unmatured	62,798,000.00
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Current liabilities:

Loans and bills payable	2,703,533.51
Traffic and car-service balances payable	641,652.82
Audited accounts and wages payable	3,503,675.66
Miscellaneous accounts payable	354,681.61
Interest matured unpaid	269,278.50
Dividends matured unpaid	130,917.00
Funded debt matured unpaid	827,000.00
Unmatured dividends declared	1,912,617.00
Unmatured interest accrued	555,490.63
Unmatured rents accrued	181,540.51
Other current liabilities	598,014.31
Total	11,680,401.55

Deferred liabilities:

Liability for provident funds	1,143.15
Other deferred liabilities	354,504.67
Total	355,647.82

Unadjusted credits:

Tax liability	283,935.73
Operating reserves	218,604.82
Accrued depreciation—equipment	51,072.83
Other unadjusted credits	355,622.31

Total	909,235.69
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[fol. 35] Appropriated surplus:

Additions to property through income and surplus	6,839,487.37	
Sinking fund reserves	3,461.96	
Appropriated surplus not specifically invested	155,395.77	
	<hr/>	
Total		6,998,345.10
Corporate surplus:		
Profit and loss credit balance		18,489,609.65
		<hr/>
Grand total		143,733,839.81

Contingent Liabilities

The carrier has guaranteed both principal and interest on \$12,675,000, and the interest only on \$2,230,000, of outstanding securities of subsidiary and affiliated companies. It has also guaranteed dividends on \$14,730,000 of stocks of subsidiary companies. For a detailed statement of the various securities embraced, reference is made to the accounting report hereinbefore mentioned.

Investment in Road and Equipment.—The investment in road and equipment, including land, on date of valuation, is stated in the books of the carrier to be \$68,642,567.68. If certain readjustments were made, as detailed in Appendix 2, this amount would be decreased to \$67,596,908.68. Of this amount \$11,408,500 consists of the par value of securities, the money value of which at the time of entry upon the books of the carrier is not known and can not be ascertained.

Original Cost to Date.—The original cost to date of the common-carrier property of the carrier cannot be ascertained owing to the inadequacy of the records.

The obtainable data on the original cost of 191.258 miles of road owned on date of valuation, and of 20,279 units of equipment, as nearly as can be ascertained, are represented by the following classes of outlay:

Road:		
Recorded money outlay	\$34,272,986.01	
Investment securities	318,000.00	
	<hr/>	
Less whatever part of the foregoing classes of outlay is represented in road abandoned and written off to profit and loss at an estimated cost of		270,000.00
		<hr/>
Equipment:		
Recorded money outlay	25,540,964.00	
Verified cost of 20,279 units of equipment out of 20,295 units returned by the carrier		

Further information respecting original cost, including the cost of lands, machinery and equipment, will be found in Appendix 2.

[fol. 36] Cost of Reproduction New and Cost of Reproduction Less Depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, wholly owned and used, owned but not used, and used but not owned, including carrier's or lessor's portion of minor facilities jointly owned, are as follows:

Classification	Cost of reproduction	
	New	Less depreciation
Wholly owned and used	\$58,432,710	\$43,249,387
Owned but not used:		
Leased to:		
Champlain Transportation Company	10,847	6,260
Carolina, Clinchfield and Ohio Railway	25,548	21,871
Total	36,395	28,131
Used but not owned:		
Leased from the:		
Albany	14,833,236	11,846,539
Rensselaer	10,635,179	8,365,362
Saratoga	2,519,073	1,979,127
Ruthall	287,344	226,771
Vermont	1,520,712	1,221,556
Northern	4,005,910	3,162,558
Placid	2,786,284	2,379,529
Dannemora	570,274	478,158
Ticonderoga	90,078	73,090
Total	37,248,090	29,732,690
Grand total owned	58,469,105	43,277,518
Grand total used	95,680,800	72,982,077

Distributed by Estates

New York

Wholly owned and used	22,703,021	19,346,708
Wholly owned but not used; leased to Champlain Transportation Company ..	10,847	6,260

Classification	Cost of reproduction	
	New	Less depreciation
Used but not owned:		
Leased from the:		
Albany	14,833,236	11,846,539
Rensselaer	9,398,854	7,387,025
Saratoga	2,519,073	1,979,127
Vermont	1,520,712	1,221,556
Placid	2,786,284	2,379,529
Dannemora	570,274	478,158
Ticonderoga	90,078	73,090
[fol. 37] Total	31,718,511	25,365,024
Grand total owned	22,713,868	19,352,968
Grand total used	54,421,532	44,711,732
Pennsylvania		
Wholly owned and used	7,231,893	5,663,494
Used but not owned:		
Leased from the Northern	4,005,910	3,162,558
Grand total owned	7,231,893	5,663,494
Grand total used	11,237,803	8,826,052
Vermont		
Wholly owned and used	4,792	2,388
Used but not owned:		
Leased from the:		
Rensselaer	1,236,325	978,337
Ruthall	287,344	226,771
Total	1,523,669	1,205,108
Grand total owned	4,792	2,388
Grand total used	1,528,461	1,207,496
Not Allocated to States		
Wholly owned and used	28,493,004	18,236,797

Classification	Cost of reproduction	
	New	Less depreciation
Owned but not used:		
Leased to Carolina, Clinchfield and Ohio Railway	25,548	21,871
Grand total owned	28,518,552	18,258,668
Grand total used	28,493,004	18,236,797

These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheets which are a part of Appendix 1.

Cost of Lands, Rights of Way, and Terminals at the Time of Their Dedication to Public Use and Present Value of the Same.—The carrier owns and uses for its purposes as a common carrier 6,243.54 acres of lands. The total original cost of these lands can not be ascertained, as the necessary accounting records are not obtainable. Data respecting original cost will be found in Appendix 2.

[fol. 38] The area and present value of lands owned and used, owned but not used, and used but not owned by the carrier for common-carrier purposes, are as follows:

Classification	Acres	Present value
Wholly owned and used.....	6,243.54	\$5,874,635.39

Wholly owned but not used:

Leased to the:

Cooperstown	8.06	147.00
New York, Ontario and Western Railway Company	11.42	8,565.00
Total	19.48	8,712.00

Used but not owned:

Leased from the:

Northern	328.26	3,648,808.32
Delaware, Lackawanna & Western Railroad Company	0.44	15,506.10
New York Central Railroad Company	6.05	26,928.32
Syracuse, Binghamton & New York Railroad Company	0.08	2.00
Rutland Railroad Company	2.33	2,577.00

Classification	Acres	Present value
Used but not owned:		
Leased from the:		
Fitchburg Rail-Road Company..	13.06	457.10
Albany	2,285.09	1,260,783.31
Vermont.....	118.00	339,188.82
Saratoga	172.53	247,132.52
Rensselaer	1,755.87	1,252,651.05
Ticonderoga	11.53	6,861.80
Placid	945.41	101,948.01
Dannemora	157.74	4,141.05
Ruthall.....	61.93	6,345.95
Private parties	31.41	22,408.58
Total.....	5,889.73	6,935,739.93
Grand total owned.....	6,263.02	5,883,347.39
Grand total used.....	12,133.27	12,810,375.32
Distributed by States		
Pennsylvania		
Wholly owned and used.....	998.09	3,269,389.90
Used but not owned:		
Leased from the:		
Northern	328.26	3,648,808.32
Delaware, Lackawanna & West- ern Railroad Company	0.44	15,506.10
Private parties	1.30	1,520.83
Total.....	330.00	3,665,835.25
Grand total owned.....	998.09	3,269,389.90
Grand total used.....	1,328.09	6,935,225.15
New York		
[fol. 39]		
Wholly owned and used.....	5,215.10	2,603,087.84
Wholly owned but not used:		
Leased to the:		
Cooperstown	8.06	147
New York, Ontario and Western Railway Company	11.42	8,565
Total.....	19.48	8,712

Classification	Acres	Present value
Used but not owned:		
Leased from the:		
New York Central Railroad Company.....	6.05	26,928.32
Syracuse, Binghamton & New York Railroad Company.....	0.08	2.00
Fitchburg Rail-Road Company..	13.06	457.10
Albany	2,285.09	1,260,783.31
Vermont.....	118.00	339,188.82
Saratoga	172.53	247,132.52
Rensselaer	1,463.01	1,218,330.52
Ticonderoga	11.53	6,861.80
Placid	945.41	101,948.01
Dannemora	157.74	4,141.05
Private parties	28.11	20,807.75
Total.....	5,200.61	3,226,581.20
Grand total owned.....	5,234.58	2,611,799.84
Grand total used.....	10,415.71	5,829,669.04

Vermont

Wholly owned and used.....	30.35	2,157.65
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Used but not owned:

Leased from the:

Rensselaer	292.86	34,320.53
Ruthall	61.93	6,345.95
Rutland Railroad Company	2.33	2,577.00
Private parties	2.00	80.00
Total.....	359.12	43,323.48
Grand total owned.....	30.35	2,157.65
Grand total used.....	389.47	45,481.13

Rights in the Public Domain and in Private Lands.—The present value of rights in the public domain and in private lands, owned and used and used but not owned by the carrier, is as follows:

[fol. 40]	Classification	Rights in public domain	Rights in private lands
Wholly owned and used.....		\$14,185.83	\$2,908

Classification	Rights in public domain	Rights in private lands
Used but not owned:		
Leased from the:		
Rensselaer	8,023.50	845
Northern .....	.....	20
Albany .....	.....	980
Saratoga .....	.....	150
Total	8,023.50	1,995
Grand total owned	14,185.83	2,908
Grand total used	22,209.33	4,903
Distributed by States		
Pennsylvania		
Wholly owned and used	337.03	1,010
Used but not owned:		
Leased from the Northern		
Grand total owned	337.03	1,010
Grand total used	337.03	1,030
New York		
Wholly owned and used	13,848.80	1,898
Used but not owned:		
Leased from the:		
Albany .....	.....	980
Rensselaer	8,023.50	680
Saratoga .....	.....	150
Total	8,023.50	1,810
Grand total owned	13,848.80	1,898
Grand total used	21,872.30	3,708
Vermont		
Used but not owned:		
Leased from the Rensselaer .....	.....	165

Information respecting the original cost of rights owned by the carrier will be found in Appendix 2.

[fol. 41] Property Held for Purposes Other Than Those of a Common Carrier.—The carrier owns 1,032.93 acres of lands classified as noncarrier. The total original cost of these lands cannot be ascertained. Data respecting original cost will be found in Appendix 2. Their present value, including the value of improvements thereon, is as follows:

Distributed by States

Classification	Acres	Present value
Pennsylvania	46.20	\$203,379.41
New York	963.24	1,651,626.94
Michigan	0.76	661.50
Illinois	0.43	4,748.40
New Jersey	22.30	1,320,942.16
Total	1,032.93	3,181,358.41

On lands used for carrier purposes are noncarrier structures, the present value of which is as follows:

Distributed by States

Pennsylvania	\$11,060
New York	21,619
Total	32,679

The carrier owns and holds cash on hand and materials and supplies in the amount of \$3,655,583. This amount is in excess of normal requirements for working capital as determined in the manner outlined in Appendix 3. Under the method there explained the re-adjusted percentage for this carrier is 13.4 which applied to annual operating expenses of \$16,381,569, closely approximating the trend for a period of five years prior to valuation date, results in the sum of \$2,195,100, the amount necessary for the carrier's use as working capital. The remainder, \$1,460,483, which is in excess of the amount required for working capital, is considered for the purposes of valuation as noncarrier property.

The carrier had recorded investments in other companies of a par value of \$53,577,137.56, which it carried at a book value of \$49,501,712.34. The details of the securities held will be found in Appendix 2.

There is shown in Appendix 2, under the heading "Miscellaneous Physical Property" the sum of \$10,280,864.44 as representing a balance shown by the carrier's books, consisting of coal lands and other items named. No part of this property is included in the property above reported as held for purposes other than those of a common carrier and investments in other companies.

Aids, Gifts, Grants of Rights of Way, and Donations.—The carrier owns certain carrier and noncarrier lands which it acquired through aids. The area and present value of these lands are as follows:

Distributed by States

Owned and used:

Classification	Acres	Present value
Pennsylvania	38.89	\$124,250.01
New York	139.73	60,623.95
Vermont	24.85	711.85
Total	<u>203.47</u>	<u>185,585.81</u>

[fol. 42] Owned but held for noncarrier purposes:

New York	8.23	784.63
New Jersey	0.07	4,352.00
Total	<u>8.30</u>	<u>5,136.66</u>

The foregoing totals are included in the preceding summaries of the present value of lands owned by the carrier. The value of these lands at the time acquired cannot be determined.

In addition to the foregoing, the carrier received public and private aids which are summarized as follows:

State aid:

By special acts passed by the legislature of New York, on March 10, 1827, and May 2, 1829, respectively, the comptroller of that state was authorized to issue to the carrier special certificates of stock to the amount of \$500,000 and \$300,000, "for the redemption of which, and the due payment of interest thereon to the owners of such stock, the faith and credit of the people of this state is hereby pledged." These issues were retired by the carrier at maturity, but the issue of this stock by the state of New York served to aid the company by the loan of the state's credit for the period of the debt.

By the terms of the act of March 10, 1827, the carrier was exempted from taxation "until the average annual income of the said corporation, from the time of its commencing business, shall amount to six per centum per annum, on its whole capital," with the provision, however "that this exemption shall not extend beyond the period of six years from the passing of this act."

Cash subsidies:

Contribution of Center Village, N. Y., towards the cost of the new station at that point in 1871-72	\$1,450
Contribution of the International Paper Company, under an agreement with the carrier dated April 10, 1901, towards the cost of track extended to the end of the paper mills of that company at South Glens Falls, N. Y.	39,757
Contribution of W. H. Miner towards the cost of a new station at Chazy, N. Y.	2,500

Materials and Supplies.—As appears in the general balance sheet, the value of materials and supplies on hand on date of valuation is shown by the carrier's records to have been \$2,323,040.89.

Final Value.—After careful consideration of all facts herein contained, including appreciation, depreciation, going-concern value, working capital and all other matters which appear to have a bearing upon the values here reported, the values, as that term is used in the Interstate Commerce Act, of the property of the carrier, owned and used, owned but not used, and used but not owned, devoted to common-carrier purposes, are found to be as follows:

[fol. 43] Wholly owned and used. \$57,195,100

Owned but not used:

Leased to the:

Champlain Transportation Company	6,600
Carolina, Clinchfield and Ohio Railway	22,000
Cooperstown	147
New York, Ontario and Western Railway Company	-8,565
Total	<u><u>37,312</u></u>

Used but not owned:

Leased from the:

The Delaware, Lackawanna & Western Railroad Company	15,506
The New York Central Railroad Company	26,928
Syracuse, Binghamton & New York Railroad Company	2
Fitchburg Railroad Company	457
Rutland Railroad Company	2,577
Albany	14,000,000
Rensselaer	10,300,000
Saratoga	2,300,000
Ruthall	240,000
Vermont	1,600,000
Northern	7,000,000
Placid	2,550,000

Used but not owned:

Leased from the:

Dannemora	500,000
Ticonderoga	82,000
Private parties	22,409
Total	38,639,879
Total owned	57,232,412
Total used	95,834,979

No other values or elements of value to which specific sums can now be ascribed are found.

The sum of \$2,195,100 is included in the value above stated as wholly owned and used on account of working capital, including material and supplies.

The Albany and Susquehanna Rail Road Company

(The Albany)

Location and General Description of Property.—The railroad of The Albany and Susquehanna Rail Road Company, hereinafter called the Albany, is a partly double track, standard gauge, steam railroad located in the east-central part of New York. The owned mileage extends southwestwardly from Albany to Binghamton, a distance of 142.441 miles. The Albany owns second-main line tracks aggregating 94.537 miles. It also owns yard and side tracks totaling 159.484 miles. Its road thus embraces 396.462 miles of all tracks owned. In Appendix 1 will be found a general description of the property of the Albany.

[fol. 44] Jointly Used Property.—The Albany has no jointly owned and used property.

Traffic Connections.—The traffic connections will be found in Appendix 1.

Physical Conditions Affecting Construction.—In Appendix 1 are statements as to the topography, geology and climate, as affecting the construction of the carrier's railroad, which are applicable to the Albany.

Economic Conditions Relating to Traffic.—Information with respect to this subject will be found in Appendix 1.

Corporate History.—The Albany was incorporated April 19, 1851, under the general laws of New York, for the purpose of constructing, maintaining and operating a railroad from Albany to Binghamton. At the last named point it was to connect with the New York and Erie Railroad, and due to this connection it was originally constructed of a broader gauge than that of the present standard gauge railroads. The articles of association filed April 19, 1851, provided that the corporation should continue for 150 years. The time of completion

of the road was extended by special acts of New York dated March 23, 1853, April 13, 1855, April 14, 1857, March 4, 1863, and April 24, 1867. Its organization was perfected by a meeting of the stockholders and election of officers on April 19, 1851. The entire property of the Albany is leased to the carrier and has been operated by the latter since February 24, 1870. Its principal offices are located at Albany and New York City.

The detailed facts as to the development of the fixed physical property are given in Appendix 2.

History of Corporate Financing, Capital Stock, and Long-term Debt.—The Albany has issued a total of \$37,295,000 in stocks, bonds and other long-term debts. Of this amount \$13,500,000 was outstanding on date of valuation. Of the securities outstanding, \$3,500,000 are in common stock and \$10,000,000 in first-mortgage bonds.

The Albany has also issued and retired short-term notes amounting to \$3,055,036.27 to date of valuation.

The purposes for which the capital securities were issued and the apparent considerations received therefor, and other facts pertinent to the capitalization of the Albany, are given in Appendix 2.

Gross and Net Earnings of the Albany.—The result of corporate operations of the Albany from September 18, 1863, to date of valuation, is stated in detail in Appendix 2, and is summarized as follows:

Gross earnings (railway operating revenues)	\$2,669,384.04
Operating expenses (railway operating expenses)	1,721,708.51

Resulting in net earnings (net revenue from railway operations) of	947,675.53
During the same period taxes assessed, (railway tax accruals) amounted to	37,066.38

[fol. 45] Resulting in an income from railway operations (railway operating income) of	910,609.15
In addition to this there was income from nonoperating sources (nonoperating income) of	37,203,676.08

Resulting in gross income for the period (gross income) of	38,114,285.23
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Resulting in that amount being available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income).

The Albany paid no dividends on its capital stock until its property was leased to the carrier on February 24, 1870. Under the agreement with that company the lessee agreed to pay 7 per cent per annum on the capital stock until the Albany city bonds were retired, and thereafter at the rate of 9 per cent per annum. This plan enabled the Albany to pay regular dividends of 7 per cent per annum from 1872 to 1902, inclusive, and 9 per cent per annum from 1903 to date of valuation, inclusive. In addition to the above, extra dividends have been paid and charged to income as follows:

At October 22, 1909, the Albany received payment of \$1,350,512.36 from the carrier for arrears in rental and interest thereon. Of this amount, \$1,050,000 was disbursed in payment of an extra dividend of 30 per cent. An extra dividend of 3.45 per cent was paid during the years 1911 to 1913, inclusive, and $3\frac{1}{4}$ per cent during the years 1914 to date of valuation, inclusive. The dividends for the period of corporate operations amounted in the aggregate to \$13,545,955.50.

General Balance Sheet.—The general balance sheet stated by the Albany, as showing its financial condition on date of valuation, follows:

Assets	
Investments:	
Investment in road and equipment	\$14,200,765.55
Investment in bonds	45,490.07
Total	\$14,246,255.62
Current assets:	
Cash	7,236.55
Miscellaneous accounts receivable	2,532.50
Rents receivable	87,500.00
Total	97,269.05
Grand total	14,343,525.67
[fol. 46] Liabilities	
Stock:	
Capital stock	\$3,500,000.00
Long-term debt:	
Funded debt unmatured	10,000,000.00
Current liabilities:	
Dividends matured unpaid	\$861.45
Unmatured interest accrued	87,500.00
Total	88,361.45
Corporate surplus:	
Profit and loss balance—credit	755,164.00
Grand total	14,343,525.67

Investment in Road and Equipment.—The investment in road and equipment, including land, on date of valuation, is stated in the books of the Albany to be \$14,200,766.55. If certain readjustments were made, as detailed in Appendix 2, this amount would be increased to \$14,322,055.32. Of this amount \$459,723.16 represents securities issued, the money value of which at the time of entry upon the books of the Albany is not known and can not be ascertained.

Original Cost to Date.—The original cost to date of the common-carrier property owned by the Albany can not be ascertained owing to the inadequacy of the accounting records. With the exception of equipment taken over by the carrier when it leased the property on February 24, 1870, the obtainable data may be summarized as follows:

Recorded money outlay.....	\$12,563,182.96
By the Albany.....	\$6,139,300.42
By the carrier (improvements on leased railway property).....	3,423,882.54
Outlay in securities.....	424,523.16
Capital stock.....	114,823.16
Funded debt.....	249,600.00
Town bonds exchanged....	60,100.00

There should be deducted from the foregoing the cost of lands classified by us as noncarrier, the excess of original cost over proceeds from sales of land, and the original cost of other land disposed of and credited to other accounts. The above outlay may also include the cost of property which may have been abandoned and not written out of the investment in road and equipment account.

Information respecting the cost of lands will be found in Appendix 2.

Cost of Reproduction New and Cost of Reproduction Less Depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, wholly owned by the Albany and leased to the carrier, are \$14,833,236 and \$11,846,539, respectively.

[fol. 47] These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheets which are a part of Appendix 1.

Cost of Lands, Rights of Way and Terminals at the Time of Their Dedication to Public Use, and Present Value of the Same.—The Albany owns 2,285.09 acres of lands which are leased to the carrier for common-carrier purposes. The total original cost of these lands can not be ascertained, as the necessary details in the accounting records are not obtainable. Information respecting original cost will be found in Appendix 2. The present value of these lands is \$1,260,783.31.

Rights in Private Lands.—The Albany owns rights in private lands, used by the carrier, with a present value of \$980. The original cost of these rights, as supported by accounting records, is

\$754.35. In addition to this amount the Albany claims costs of \$632.30, which are not supported by accounting records.

Property Held for Purposes Other Than Those of a Common Carrier.—The Albany owns 0.22 of an acre of land classified as noncarrier. The original cost of this land, as supported by accounting records, is \$502. Its present value, including the value of improvements thereon, is \$626.21.

On lands used for carrier purposes are noncarrier structures with a present value of \$14,000.

On date of valuation, the Albany had an investment of \$45,000 par value of New York City bonds which it acquired for \$45,490.07 in cash.

Aids, Gifts, Grants of Rights of Way, and Donations.—Of the lands owned by the Albany and leased to the carrier for common-carrier purposes, 40.49 acres, with a present value of \$110,059.59, were acquired through aids, the title to this land being conveyed by deeds reciting nominal considerations only. The value of this land at the time acquired can not be determined.

Under special acts passed by the legislature of New York, the Albany received donations from that state of \$750,000, paid in five installments from January, 1865, to February, 1868, in consideration of construction and equipping the road, which was credited to the investment in road and equipment account.

Under authority of a special act of New York, the city of Albany issued its 30-year bonds of a par value of \$1,000,000 in aid of construction. These bonds were retired with cash at maturity by the Albany.

Under special acts of the legislature of New York dated March 27, 1852, March 31, 1856, and amendments subsequent thereto, various towns subscribed to the capital stock of the Albany in the following amounts.

Town	Amount
Afton	\$30,000
Bainbridge	30,000
Binghamton	50,000
Cobleskill	60,000
Colesville	50,000
[fol. 48]	
Davenport	30,000
Duanesburg	30,000
Decatur	20,000
Esperance	30,000
Maryland	70,000
Milford	60,000
Otego	70,000
Oneonta	70,000
Richmondville	50,000
Summit	25,000

Town	Amount
Seward	30,000
Schoharie	30,000
Sidney	50,000
Unadilla	70,000
Worcester	65,000
Westford	30,000
Total	950,000

The Albany received cash donations from various individuals during the years 1853 to 1867, in amounts ranging from \$25 to \$250, to the aggregate of \$2,225. Of this amount \$400 was subsequently eliminated by the issue of capital stock, \$1,725 was credited to investment in road and equipment, and the remaining \$100 was donated by the grantor of a parcel of land in 1864 for which the total consideration was \$118.75, the Albany paying the difference of \$18.75 to the donor.

Materials and Supplies.—The Albany had no materials and supplies on hand on date of valuation.

Final Value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value, as that term is used in the Interstate Commerce Act, of the property of the Albany, owned but not used, leased to the carrier for common-carrier purposes, is found to be \$14,000,000.

No other values or elements of value to which specific sums can now be ascribed are found.

No working capital, including materials and supplies, is found to be owned or used by the Albany.

The Rensselaer and Saratoga Railroad Company (The Rensselaer)

Location and General Description of Property.—The railroad of the Rensselaer and Saratoga Railroad Company, hereinafter called the Rensselaer is a partly double track, standard gauge, steam railroad located in the states of New York and Vermont. The owned mileage extends from Troy to Ballston Spa, a distance of 25.150 miles; from Watervliet to Green Island, 1.080 miles; from Glens Falls to Lake George, 9.060 miles, from Saratoga Springs to Whitehall, 40.950 miles, from Whitehall to New York-Vermont state line, 6.590 miles; from Eagle Bridge to New York-Vermont state line, 32.400 miles; from Fort Edward to Glens Falls, 5.400 miles; and New York-Vermont state line to Rutland, Vt., 33.074 miles.

The following is a summary of the mileage owned by the Rensselaer and leased to the carrier for common-carrier purposes:

Wholly owned:

Leased to the carrier:

	First main track	Second main track	Yard tracks and sidings	All tracks
In New York . . .	120.630	59.626	92.497	272.753
[fol. 49]				
In Vermont	33.074	.....	11.094	44.168
Total owned . . .	153.704	59.626	103.591	316.921

In Appendix 1 will be found a general description of the property of the Rensselaer.

Jointly Used Property.—The Rensselaer has no jointly owned and used property.

Traffic Connections.—The traffic connections will be found in Appendix 1.

Physical Conditions Affecting Construction.—In Appendix 1 are statements as to the topography, geology and climate, as affecting the construction of the carrier's railroad, which are applicable to the Rensselaer.

Economic Conditions Affecting Traffic.—Information with respect to this subject will be found in Appendix 1.

Corporate History.—The Rensselaer is a corporation of the state of New York, with principal office at Troy, and was incorporated under a special act of April 14, 1832. Its property was leased on May 1, 1871, for the term of its charter, to the carrier.

The detailed facts as to the development of the fixed physical property are given in Appendix 2.

History of Corporate Financing, Capital Stock, and Long-Term Debt.—The Rensselaer, so far as can be ascertained from obtainable records, has issued a total of \$17,775,000 in stocks, bonds and other long-term debts, of which \$12,000,000 was outstanding on date of valuation. Of the securities outstanding \$10,000,000 are in common stock and \$2,000,000 in bonds.

The Rensselaer also issued and retired, to date of valuation, short-term notes aggregating \$455,084.84.

The purposes for which the capital securities were issued and the apparent considerations received therefor, and other facts pertinent to the capitalization of the Rensselaer, are given in Appendix 2.

Gross and Net Earnings of the Rensselaer.—The result of the corporate operations of the Rensselaer for the year ended on date of valuation, and for the period from October 1, 1866, to date of valuation, is stated in detail in Appendix 2, and is summarized as follows:

Gross earnings (railway operating revenues)	\$6,769,680.99
Operating expenses (railway operating expenses)	4,666,678.25

Resulting in net earnings (net revenue from railway operations) of	2,103,002.74
During the same period taxes assessed (railway tax accruals) amounted to	340,774.86

[fol. 50] Resulting in an income from railway operations (railway operating income) of	1,762,227.88
In addition to this there was income from nonoperating sources (nonoperating income) of	334,816.31

Resulting in gross income for the period (gross income) of	2,097,044.19
During this period rents and hire of equipment (chargeable to deductions from gross income and to disposition of net income) amounted to	386,352.32

Resulting in an amount available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income) of	1,710,691.87
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From October 1, 1866, to April 30, 1871, dividends were paid annually out of surplus at rates varying from 3 to 7 per cent, to the aggregate amount of \$874,750. In addition, the published reports of the State Engineer and Surveyor, and the Railroad Commissioners of the state of New York, indicate that dividends were paid during the years 1848 to 1866, inclusive, at rates varying, so far as ascertainable, from 3 to 8 per cent, to the aggregate amount of \$392,628.

General Balance Sheet.—The general balance sheet stated by the Rensselaer, as showing its financial condition on date of valuation, follows:

Investments:	Assets
Investment in road and equipment	\$11,524,552.13
Investment in stock	475,447.87
Investment in bonds	47,000.00
Total	\$12,047,000.00
Current assets:	
Cash	6,626.47
Rents receivable	423,333.33
Total	429,959.80
Grand total	12,476,959.80

Liabilities

Stock:

Capital stock	\$10,000,000.00
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Long-term debt:

Funded debt unmatured	2,000,000.00
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Current liabilities:

Dividends matured unpaid ..	\$400,000.00
Unmatured interest accrued .	23,333.33

Total	423,333.33
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[fol. 51] Corporate surplus:

Profit and loss balance—credit	53,626.47
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Grand total	12,476,959.80
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Investment in Road and Equipment.—The investment in road and equipment, including land, on date of valuation, is stated in the books of the Rensselaer to be \$11,524,552.13. If certain readjustments were made, as detailed in Appendix 2, this amount would be decreased to \$9,015,613.50. Of this amount \$2,267,900 consists of the par value of securities, the money value of which at the time of entry upon the books of the Rensselaer is not known and can not be ascertained.

Original Cost to Date.—The original cost to date of the common-carrier property of the Rensselaer can not be ascertained owing to the inadequacy of the records. With the exception of equipment, the outlays by the predecessor companies and by the Rensselaer to date of valuation are summarized as follows:

Recorded and Reported Outlay

Recorded money outlay	\$6,312,637.81
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By the Rensselaer	\$4,418,467.60
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By the lessee for improvements on leased railway property charged to the investment in road and equipment account of the former	1,894,170.21
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Mortgage bonds issued, par value	99,000.00
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Considerations not of record	4,621,530.02
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By the Rensselaer:

Reported outlay to September 30, 1867	1,227,986.32
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By predecessor companies:

Sworn reports to state of

New York 3,393,543.70

Less proceeds from sale of land and buildings..... 3,550.00

A separation of the foregoing amounts as between predecessor companies, together with information respecting the cost of lands, will — found in Appendix 2,

Cost of Reproduction New and Cost of Reproduction Less Depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, wholly owned by the Rensselaer and leased to the carrier, are as follows:

Wholly owned but not used:

Leased to the carrier:

Classification	Cost of reproduction	
	New	Less depreciation
In New York	\$9,398,854	\$7,387,025
In Vermont	1,236,325	978,337
Total owned	10,635,179	8,365,362

[fol. 52] These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheets which are a part of Appendix 1.

Cost of Lands, Rights of Way and Terminals at the Time of Their Dedication to Public Use, and Present Value of the Same.—The total original cost of the lands owned by the Rensselaer and leased to the carrier for common-carrier purposes can not be ascertained, as the necessary details in the accounting records are not obtainable. Information respecting the original cost will be found in Appendix 2.

The Rensselaer owns 1,755.87 acres of lands which are leased to the carrier for common-carrier purposes. The area and present value of these lands, divided by states, is as follows:

Wholly owned:

Leased to the carrier:

Classification	Acres	Present value
In New York	1,463.01	\$1,218,330.52
In Vermont	292.86	34,320.53
Total	1,755.87	1,252,651.05

Rights in Public Domain.—The Rensselaer owns and leases to the carrier rights in the public domain, located in New York, with a

present value of \$8,023.50. The total original cost of these rights can not be ascertained. Information with respect to the cost will be found in Appendix 2.

Rights in Private Lands.—The Rensselaer owns and leases to the carrier rights in private lands as follows:

	Present value
In New York	\$680
In Vermont	165
Total	<u>845</u>

The total original cost of these rights can not be ascertained. The obtainable data will be found in Appendix 2.

Property Held for Purposes Other Than Those of a Common Carrier.—The Rensselaer owns 20.99 acres of lands classified as non-carrier and located in New York, with a present value, including the value of improvements thereon, of \$84,448.42. The total original cost of these lands can not be ascertained. Further information will be found in Appendix 2.

On lands used for common-carrier purposes, located in New York, are noncarrier structures with a present value of \$146,200.

The Rensselaer also owns securities which are held for noncarrier purposes as follows:

[fol. 53]

Stock:

Affiliated companies:

Property	Par value	Book value
The Champlain Transportation Company	\$95,540	\$350,447.87
Nonaffiliated companies:		
The Troy Union Rail Road Company	7,500	125,000.00
Total	<u>102,950</u>	<u>475,447.87</u>

Bonds:

Nonaffiliated companies:

West Shore Railroad Company.....	20,000	20,000.00
Miscellaneous:		
New York City, 4 per cent corporated stock	27,000	27,000.00
Grand total.....	<u>149,950</u>	<u>522,447.87</u>

Further details will be found in Appendix 2.

Aids, Gifts, Grants of Rights of Way, and Donations.—The Rensselaer owns certain carrier and noncarrier lands which were acquired through aids. The area and present value of these lands are as follows:

Wholly owned:

Leased to the carrier:

Classification	Acres	Present value
In New York.....	47.29	\$123,717.59
In Vermont.....	8.01	369.40
Total	55.30	124,086.99

Wholly owned:

Held for noncarrier purposes:

In New York.....	0.81	9,658.60
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The foregoing totals are included in the preceding summaries of the present value of lands owned by the Rensselaer. The value of these lands at the time acquired can not be determined.

Materials and Supplies.—The Rensselaer had no material and supplies on hand on date of valuation.

Final Value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value, as that term is used in the Interstate Commerce Act, of the property of the Rensselaer, owned but not used, leased to the carrier for common-carrier purposes, is found to be \$10,300,000.

No other values or elements of value to which specific sums can now be ascribed are found.

No working capital, including material and supplies, is found to be owned or used by the Rensselaer.

[fol. 54] Albany and Vermont Rail Road Company

(The Vermont)

Location and General Description of Property.—The railroad of Albany and Vermont Rail Road Company, hereinafter called the Vermont, is a partly double track, standard gauge, steam railroad located in the east-central part of New York. The owned mileage extends northwardly from Albany to Waterford Junction, a distance of 12.273 miles. The Vermont owns second main tracks aggregating 12.217 miles. It also owns yard and side tracks totaling 17.682 miles. Its road thus embraces 42.172 miles of all tracks owned.

In Appendix 1 will be found a general description of the property of the Vermont.

Jointly Used Property.—The Vermont has no jointly owned and used property.

Traffic Connections.—The traffic connections will be found in Appendix 1.

Physical Conditions Affecting Construction.—In Appendix 1 are statements as to topography, geology and climate, as affecting the construction of the carrier's railroad, which are applicable to the Vermont.

Economic Conditions Relating to Traffic.—Information with respect to this subject will be found in Appendix 1.

Corporate History.—The Vermont was incorporated October 6, 1859, under the general laws of New York, for a term of 500 years, and has its principal office at Troy, N. Y. Its organization was perfected on October 17, 1859.

The Vermont was a reorganization of the first-mortgage bondholders of the Northern for the purpose of acquiring the property of the Canada, which was conveyed to it by deed dated September 22, 1859, from Abijah Mann, Jr., who had previously acquired it at a foreclosure sale on September 19, 1859.

History of Corporate Financing, Capital Stock, and Long-term Debt.—The Vermont has issued a total of \$600,000 in capital stock, all of which was outstanding on date of valuation.

The purposes for which the capital securities were issued and the apparent considerations received therefor, and other facts pertinent to the capitalization of the Vermont, are given in Appendix 2.

Gross and Net Earnings of the Vermont.—The result of the corporate operations of the Vermont from October 8, 1859, to date of valuation, is stated in detail in Appendix 2, and is summarized as follows:

Gross earnings (railway operating revenues)	\$36,657.65
Operating expenses (railway operating expenses) . . .	54,544.28
[fol. 55] Resulting in a deficit, instead of net earnings (net revenue from railway operations—deficit) of	17,886.63
Offsetting this there was income from nonoperating sources (nonoperating income) of	1,136,076.32
Resulting in gross income for the period (gross income) of	1,118,189.69
During this period rents (chargeable to deductions from gross income) amounted to	55,777.57
Resulting in an amount available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income), of	1,062,412.12

From 1860 to date of valuation, both inclusive, dividends were paid annually out of surplus at rates varying from $2\frac{1}{2}$ to 8 per cent, to the aggregate amount of \$1,048,500.

General Balance Sheet.—The general balance sheet stated by the Vermont, as showing its financial condition on date of valuation, follows:

Assets	
Investments:	
Investment in road and equipment.....	\$600,000.00
Investment in bonds.....	5,000.00
Total	<u>605,000.00</u>
Current assets:	
Cash	<u>12,774.72</u>
Grand total.....	<u><u>617,774.72</u></u>
Liabilities	
Stock:	
Capital stock.....	600,000.00
Corporate surplus:	
Profits and loss—credit balance.....	<u>17,774.72</u>
Grand total.....	<u><u>617,774.72</u></u>

Investment in Road and Equipment.—The Vermont owns no equipment. The investment in road, including land, on date of valuation, is stated in the books of the Vermont to be \$300,000. If certain readjustments were made, as detailed in Appendix 2, this amount would be increased to \$603,151.72. Of this amount \$538,650 consists of the par value of securities issued, the money value of which at the time of entry upon the books of the Vermont is not known and can not be ascertained.

[fol. 56] Original Cost to Date.—The original cost to date of the common-carrier property of the Vermont can not be ascertained owing to the inadequacy of the records. The Vermont and the Rensselaer made certain additions and betterments, the outlays for which may be classified as follows:

	Recorded money outlay	Reported costs, considerations not of record
Northern .....	.....	\$1,552,802.63
Canada .....	.....	10,032.94
Vermont	\$22,892.44	
Rensselaer	204,579.77	

Less deduction not assignable to any one
or more of the classes of outlay stated
above:

Proceeds from the sale of land 2,779.71

The foregoing costs include the outlay for approximately 21 miles of road abandoned but not written out of the investment account.

Cost of Reproduction New and Cost of Reproduction Less Depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, wholly owned by the Vermont and leased to the carrier, are \$1,520,712 and \$1,221,556, respectively.

These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheet which is a part of Appendix 1.

The Cost of Lands, Rights of Way and Terminals at the Time of Their Dedication to Public Use, and Present Value of the Same.—The Vermont owns 118 acres of land leased to the carrier for common-carrier purposes, with a present value of \$339,188.82. The original cost of these lands, as supported by accounting records, was \$111,671.34. The Vermont claims costs amounting to \$112,819.63, which are not supported by accounting records.

Property Held for Purposes Other Than Those of a Common Carrier.—The Vermont owns \$5,000 par value of first-mortgage 4 per cent bonds of West Shore Railroad Company, for which it paid \$4,995. The adjustment was made to par value by credit of \$5 to its income.

Aids, Gifts, Grants of Rights of Way, and Donations.—Of the lands owned by the Vermont and leased to the carrier for common-carrier purposes, 3.58 acres, with a present value of \$5,223.58, were acquired by it through aids, the title to this land being conveyed by deeds reciting nominal or no considerations. The value of this land at the time acquired can not be determined.

The Vermont reports a donation of \$300 in cash by unknown individuals for the purpose of aiding the construction of a station at Menanda.

Materials and Supplies.—The Vermont had no materials and supplies on hand on date of valuation.

[fol. 57] Final Value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value, as that term is used in the

Interstate Commerce Act, of the property of the Vermont, owned but not used, leased to the carrier for common-carrier purposes, is found to be \$1,600,000.

No other values or elements of value to which specific sums can now be ascribed are found.

No working capital, including material and supplies, is found to be owned or used by the Vermont.

Rutland and Whitehall Railroad Company

(The Ruthall)

Location and General Description of Property.—The railroad of Rutland and Whitehall Rail Road Company, hereinafter called the Ruthall, is a single track, standard gauge, steam railroad located in the west-central part of Vermont. The owned mileage extends northeastwardly from the New York-Vermont state line to Castleton, a distance of 6.833 miles. The Ruthall also owns yard and side tracks totaling 2.205 miles. Its road thus embraces 9.038 miles of all tracks owned.

In Appendix 1 will be found a general description of the property of the Ruthall.

Jointly Used Property.—The Ruthall has no jointly owned and used property.

Traffic Connections.—The traffic connections will be found in Appendix 1.

Physical Conditions Affecting Construction.—In Appendix 1 are statements as to topography, geology, and climate, as affecting the construction of the carrier's railroad, which are applicable to the Ruthall.

Economic Conditions Relating to Traffic.—Information with respect to this subject will be found in Appendix 1.

Corporate History.—The Ruthall was incorporated November 13, 1848, under a special act of Vermont, and perfected its organization on March 3, 1849, by the election of its officers. The entire property of the Ruthall is leased in perpetuity to the Rensselaer from February 1, 1870. The lease was assigned to the carrier on June 15, 1871, and the property has been operated by the latter since May 1, 1871. The principal office of the Ruthall is located at Fair Haven.

The detailed facts as to the development of the fixed physical property are given in Appendix 2.

[fol. 58] **History of Corporate Financing, Capital Stock and Long-term Debt.**—The Ruthall has issued a total of \$255,700 in capital stock, all of which was outstanding on date of valuation.

The character or value of the considerations received could not be ascertained, but the records show an equal amount charged to investment in road and equipment account. The accounts state that \$29,700 of the stock was issued to Arundah W. Hyde in full settlement for the construction of the branch road from Hydesville to Lake Bomoseen.

Gross and Net Earnings of the Ruthall.—The income of the Ruthall consists entirely of the rental received from the lease of its road, which is paid to the stockholders as dividends. The rental for the period November 1, 1850, to October 31, 1854, was equal to 7 per cent per annum upon the outstanding capital stock. From the latter date to April 30, 1856, no rental was received because of the insolvency of the lessee, and since then the annual rental has been \$15,342, representing 6 per cent on the capital stock and \$150 per year for organization expenses. The carrier assumes the maintenance of the property.

General Balance Sheet.—The general balance sheet stated by the Ruthall, as showing its financial condition on date of valuation, follows:

Assets	
Investments:	
Investment in road and equipment.....	\$255,700
Liabilities	
Stock:	
Capital stock	\$255,700

Investment in Road and Equipment.—The Ruthall owns no equipment. The investment in road, including land, is stated in its report to us for the year ending on date of valuation to be \$255,700, the exact amount of the capital stock issued. Whether or not this amount represents money outlay can not be ascertained. Further details will be found in Appendix 2.

Original Cost to Date.—The original cost to date of the property of the Ruthall can not be ascertained owing to the inadequacy of the records. With the exception of equipment, the book value of which has not been written out of the account, the recorded outlay was \$209,700. This amount includes \$29,700 par value of capital stock issued for the construction of a branch line which was subsequently abandoned, and may also include the cost of other property abandoned, sold or destroyed, in excess of the credits made to the account, and also the cost of lands classified by us as noncarrier.

Cost of Reproduction New and Cost of Reproduction Less Depreciation.—The cost of reproduction now and cost of reproduction less depreciation of all common-carrier property, other than land, wholly owned by the Ruthall and leased to the carrier, are \$287,344 and \$226,771, respectively. These amounts, classified in conformity [fol. 59] with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheet which is a part of Appendix 1.

Cost of Lands, Rights of Way and Terminals at the Time of Their Dedication to Public Use, and the Present Value of Same.—The Ruthall owns 61.93 acres of land which are leased to the carrier for common-carrier purposes, with a present value of \$6,345.95. The total original cost of these lands could not be ascertained as the

necessary accounting records are not obtainable, but the original cost, as supported by accounting records, was \$687. The Ruthall also claims costs of \$8,353.60, which are not supported by accounting records.

Property Held for Purposes Other Than Those of a Common Carrier.—The Ruthall owns 8.30 acres of lands classified as non-carrier, with a present value, including the value of improvements thereon, of \$304.50. The original cost of these lands could not be ascertained. The Ruthall claims costs of \$1,348, which are not supported by accounting records.

On lands leased to the carrier for common-carrier purposes are non-carrier structures with a present value of \$20.

Aids, Gifts, Grants of Rights of Way, and Donations.—The Ruthall received no aids, gifts, grants of rights of way, or donations.

Materials and Supplies.—The Ruthall had no materials and supplies on hand on date of valuation.

Final Value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value, as that term is used in the Interstate Commerce Act, of the property of the Ruthall, owned but not used, leased to the carrier for common-carrier purposes, is found to be \$240,000.

No other values or elements of value to which specific sums can now be ascribed are found.

No working capital, including material and supplies, is found to be owned or used by the Ruthall.

Saratoga and Schenectady Rail Road Company (The Saratoga)

Location and General Description of Property.—The railroad of Saratoga and Schenectady Rail Road Company, hereinafter called the Saratoga, is a partly double track, standard gauge, steam railroad located in the east-central part of New York. The owned mileage extends northeasterly from Schenectady to Saratoga Springs, a distance of 20.806 miles. The Saratoga owns second main line tracks aggregating 11.394 miles. It also owns yard and side tracks totaling 45.375 miles. Its road thus embraces 77.575 miles of all tracks owned.

[fol. 60] In Appendix 1 will be found a general description of the property of the Saratoga.

Jointly Used Property.—The Saratoga has no jointly owned and used property.

Traffic Connections.—The traffic connections will be found in Appendix 1.

Physical Conditions Affecting Construction.—In Appendix 1 are statements as to the topography, geology, and climate, as affecting the construction of the carrier's railroad, which are applicable to the Saratoga.

Economic Conditions Relating to Traffic.—Information with respect to this subject will be found in Appendix 1.

Corporate History.—The Saratoga was incorporated February 16, 1831, under a special act of New York. The date of its organization can not be ascertained.

On January 1, 1851, the property was leased to the Rensselaer, which operated it until May 1, 1871, when its lease was assigned to the carrier.

The principal office of the Saratoga is located at Troy.

The road from Schenectady to Ballston Spa was opened for operation on July 12, 1832, and from Ballston Spa to Saratoga Springs in 1833.

History of Corporate Financing, Capital Stock, and Long-term Debt.—So far as can be ascertained from the records, the Saratoga has issued a total of \$523,000 in stocks and bonds. Of this amount \$450,000, consisting of capital stock, was outstanding on date of valuation.

The purposes for which the capital securities were issued and the apparent considerations received therefor, and other facts pertinent to the capitalization of the Saratoga, are given in Appendix 2.

Gross and Net Earnings of the Saratoga.—The result of corporate operations of the Saratoga can not be stated for the entire period of operation owing to the absence of the accounting records. The result from January 1, 1861, to date of valuation, is stated as non-operating and gross income of \$1,768,889.35, which amount was available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income). The details of this amount are shown in Appendix 2.

From 1861, to date of valuation, inclusive, dividends were paid at rates varying from 5 to 9 per cent, which, with an extra dividend of $3\frac{1}{4}$ per cent in 1890, aggregated in amount \$1,748,398.

General Balance Sheet.—The general balance sheet stated by the Saratoga, as showing its financial condition on date of valuation, follows:

[fol. 61]

Assets

Investments:

Investments in road and equipment.....	\$450,000.00
Investment in bonds.....	5,000.00
Total	455,000.00

Current assets:

Cash	671.88
Rents receivable.....	31,500.00
Total	32,171.88
Grand total.....	487,171.88

Liabilities

Stock:

Capital stock	\$450,000.00
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Current liabilities:

Unmatured dividends.....	31,500.00
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Corporate surplus:

Profit and loss—credit balance.....	5,671.88
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Grand total.....	487,171.88
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Investment in Road and Equipment.—The Saratoga owns no equipment. The investment in road, including land, on date of valuation, is stated in its report to us to be \$450,000.

The details of this amount will be found in Appendix 2.

Original Cost to Date.—The original cost to date of the common-carrier property of the Saratoga can not be ascertained owing to the inadequacy of the records. In its report to us the cost is shown as \$450,000, but this amount may include the cost of lands classified by us as noncarrier, and as partly carrier and partly noncarrier, and also the cost of property abandoned, sold or destroyed, in excess of the charges made for salvage, proceeds from sale, and loss from such property. Information respecting the cost of lands will be found in Appendix 2.

Cost of Reproduction New and Cost of Reproduction Less Depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, wholly owned by the Saratoga and leased to the carrier, are \$2,519,073 and \$1,979,127, respectively. These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheet which is a part of Appendix 1.

Cost of Lands, Rights of Way and Terminals at the Time of Their Dedication to Public Use, and Present Value of the Same.—The Saratoga owns 172.53 acres of lands, with a present value of \$247,132.52, which are leased to the carrier for common-carrier purposes. The total original cost of these lands can not be ascertained. Data respecting original cost will be found in Appendix 2.

[fol. 62]. Rights in Private Lands.—The Saratoga owns rights in private lands, leased to the carrier, with a present value of \$150. The Saratoga claims costs of \$150 for these rights, which are not supported by accounting records.

Property Held for Purposes Other Than Those of a Common Carrier.—The Saratoga owns 8.37 acres of land classified as non-carrier, with a present value, including the value of improvements thereon, of \$7,545. Information respecting the original cost of these lands will be found in Appendix 2.

On lands leased to the carrier for common-carrier purposes are non-carrier structures with a present value of \$1,200.

On date of valuation, the Saratoga had an investment in first-mortgage 4 per cent bonds of West Shore Railroad Company, of a par value of \$5,000, which were acquired at a cost of \$5,306.25. These bonds are carried at their par value, the difference of \$306.25 being charged off to income.

Aids, Gifts, Grants of Rights of Way and Donations.—Of the lands owned by the Saratoga and leased to the carrier for common-carrier purposes, 5.17 acres, with a present value of \$62,932.05, were acquired through aids, the title to this land being conveyed by deeds reciting nominal considerations only. The value of this land at the time acquired cannot be ascertained.

Materials and Supplies.—The Saratoga had no materials and supplies on hand on date of valuation.

Final Value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value, as that term is used in the Interstate Commerce Act, of the property of the Saratoga, owned but not used, leased to the carrier for common-carrier purposes, is found to be \$2,300,000.

No other values or elements of value to which specific sums can now be ascribed are found.

No working capital, including material and supplies, is found to be owned or used by the Saratoga.

Northern Coal and Iron Company

(The Northern)

Location and General Description of Property.—Northern Coal and Iron Company, hereinafter called the Northern, is a partly double track, standard gauge, steam railroad located in the northeastern part of Pennsylvania. The owned mileage extends southwesterly from Scranton to Wilkes-Barre, a distance of 29.284 miles. The Northern owns second main tracks aggregating 34.330 miles. It also owns yard and side tracks totaling 60.476 miles. Its road thus embraces 124.090 miles of all tracks owned.

[fol. 63] In Appendix I will be found a general description of the property of the Northern.

Jointly Used Property.—The Northern owns and uses jointly with The Delaware, Lackawanna & Western Railroad Company 0.445 of a mile of all tracks, one-half each, carrier's portion of cost of reproduction and cost of reproduction being included in wholly owned property.

Traffic Connections.—The traffic connections will be found in Appendix 1.

Physical Conditions Affecting Construction.—In Appendix 1 are statements as to the topography, geology, and climate, as affecting the construction of the carrier's railroad, which are applicable to the Northern.

Economic Conditions Relating to Traffic.—Information with respect to this subject will be found in Appendix 1.

Corporate History.—The Northern is a corporation of Pennsylvania with its principal office at New York City. It was incorporated April 27, 1864, by special act of Pennsylvania, and by letters patent dated April 20, 1865, by interests identified with the carrier. The purpose of incorporation was to acquire lands in Luzerne county (now Luzerne and Lackawanna counties), mining and vending the minerals found in these lands, and for transporting such minerals. The Northern was authorized to construct and operate "lateral railroads from their mines, not exceeding 20 miles in length, to connect with any railroad now constructed or to be hereafter constructed in the county of Luzerne." By a subsequent act of Pennsylvania it was authorized to "construct or extend their railroad (a single or double track) to any point on the Delaware or Susquehanna rivers within the counties of Wayne or Susquehanna, provided said railroad and branches shall not exceed in the aggregate 60 miles in length." The Northern was organized May 16, 1865.

The lines acquired through consolidation and merger were operated until November 7, 1886, by the carrier, for the transportation of anthracite coal, and by the Lehigh Coal & Navigation Company for the transportation of all other freight and passengers. Since November 7, 1886, the entire property has been solely operated by the carrier. The detailed facts as to the development of the fixed physical property are given in Appendix 2.

History of Corporate Financing, Capital Stock, and Long-term Debt.—The Northern has issued a total of \$27,799,556.30 in stocks, bonds, and other long-term debts, of which \$6,255,100.77 was outstanding on date of valuation. Of the securities outstanding \$1,500,000 are in common stock and \$4,755,100.70 in non-negotiable debt to affiliated companies. The Northern is controlled by the carrier through ownership of its entire outstanding capital stock.

The purposes for which the capital securities were issued and the apparent considerations received therefor, and other facts pertinent to the capitalization of the Northern, are given in Appendix 2.

Gross and Net Earnings of the Northern.—The result of corporate operations for the period January 1, 1868, to December 31, 1903, is recorded in the accounting records of the Northern, but since the latter date the revenues and expenses have been merged with those of [fol. 64] the carrier. The income account for the period January 1, 1868, to December 31, 1906, is stated in Appendix 2, and is summarized as follows:

During this period taxes assessed (railway tax accruals) amounted to.....	\$960,298.16
Resulting in a deficit, instead of income from railway operations (railway operating income—deficit) of.	960,298.16

In addition to this there was:

Net loss from miscellaneous operations of	\$114,307.85	
Income from nonoperating sources (nonoperating income)	9,857,269.44	9,742,961.59
		<hr/>

Resulting in gross income for the period (gross income) of	8,782,663.43
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Resulting in that amount being available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income).

No dividends have been paid by the Northern.

General Balance Sheet.—The general balance sheet stated by the Northern, as showing its financial condition on date of valuation, follows:

Assets

Investments:

Investment in road and equipment..	\$3,898,388.35	
Miscellaneous physical property....	2,353,712.42	
		<hr/>
Total		\$6,255,100.77

Liabilities

Stock:

Capital stock	\$1,500,000.00
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Long-term debt:

Non-negotiable debt to affiliated companies	4,755,100.77	
		<hr/>
Grand total		6,255,100.77

Investment in Road and Equipment.—The Northern owns no equipment. The investment in road, including land, on date of valuation, is stated in its books to be \$3,898,388.35. Of this amount \$1,100,000 consists of the par value of securities, the money value of which at the time of entry upon the books of the Northern is not known and can not be ascertained. Further details will be found in Appendix 2.

[fol. 65] Original Cost to Date.—The original cost to date of the common-carrier property of the Northern can not be ascertained owing to the inadequacy of the records. Information respecting the original cost of land will be found in Appendix 2.

Cost of Reproduction New, and Cost of Reproduction Less Depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, wholly

owned by the Northern and leased to the carrier, including the Northern's portion of jointly owned property, are \$4,005,910 and \$3,162,558, respectively. These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheets which are a part of Appendix 1.

Cost of Lands, Rights of Way, and Terminals at the Time of Their Dedication to Public Use, and Present Value of the Same.—The Northern owns 328.26 acres of lands, with a present value of \$3,648,808.32, which are leased to the carrier for common-carrier purposes. The total original cost of these lands can not be ascertained, as the necessary accounting records are not obtainable. Data respecting original cost will be found in Appendix 2.

Rights in Private Lands.—The Northern owns and leases to the carrier for common-carrier purposes rights in private lands with a present value of \$20. The original cost of these rights could not be ascertained. The Northern claims costs of \$10,000, which are not supported by accounting records.

Property Held for Purposes Other Than Those of a Common Carrier.—The Northern owns 42.40 acres of lands classified by us as non-carrier, with a present value, including the value of improvements thereon, of \$280,046.41. Obtainable data pertaining to the original cost of these lands will be found in Appendix 2.

On lands leased to the carrier for common-carrier purposes are non-carrier structures with a present value of \$4,600.

Aids, Gifts, Grants of Rights of Way, and Donations.—Of the lands owned by the Northern and leased to the carrier for common-carrier purposes, 31.80 acres, with a present value of \$67,536.32, were acquired through aids, the title to this land being conveyed by deeds reciting nominal considerations only. The value of this land at the time acquired can not be ascertained.

Materials and Supplies.—The Northern had no materials and supplies on hand on date of valuation.

Final Value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value, as that term is used in the Interstate Commerce Act, of the property of the Northern, owned but not used, leased to the carrier for common-carrier purposes, is found to be \$7,000,000.

No other values or elements of value to which specific sums can now be ascribed are found.

No working capital, including material and supplies, is found to be owned or used by the Northern.

[fol. 66] The Ticonderoga Railroad Company

(The Ticonderoga)

Location and General Description of Property.—The railroad of The Ticonderoga Railroad Company, hereinafter called the Ticon-

deroga, is a single track, standard gauge, steam railroad located in the east-central part of New York. The owned mileage extends westwardly from Ticonderoga Junction to Ticonderoga, a distance of 0.587 of a mile. The Ticonderoga also owns yard and side tracks totaling 2.537 miles. Its road thus embraces 3.124 miles of all tracks owned.

In Appendix 1 will be found a general description of the property of the Ticonderoga.

Jointly Used Property.—The Ticonderoga has no jointly owned and used property.

Traffic Connections.—The traffic connections will be found in Appendix 1.

Physical Conditions Affecting Construction.—In Appendix 1 are statements as to the topography, geology, and climate, as affecting the construction of the carrier's railroad, which are applicable to the Ticonderoga.

Economic Conditions Relating to Traffic.—Information with respect to this subject will be found in Appendix 1.

Corporate History.—The Ticonderoga was incorporated under the general laws of New York December 13, 1889, for a term of 50 years, for the purpose of constructing, maintaining and operating a railroad from a connection with the New York at Ticonderoga Junction to Ticonderoga. The date of organization was November 20, 1889, and its principal office was originally located at Ticonderoga. This office has since been located at New York City.

The property of the Ticonderoga has been operated by the carrier since the date the road was opened for operation, under an agreement dated August 13, 1890, effective for the life of the lessor company.

The detailed facts as to the development of the fixed physical property are given in Appendix 2.

History of Corporate Financing, Capital Stock, and Long-term Debt.—The Ticonderoga has issued a total of \$60,000 in stocks and bonds, all of which was outstanding on date of valuation. Of the securities outstanding, \$30,000 are in capital stock and an equal amount in first-mortgage bonds. Of the stock, \$18,500 is in common and \$11,500 in preferred. The Ticonderoga also issued and had outstanding on date of valuation \$14,253.60 in short-term notes.

The purposes for which the capital securities were issued and the apparent considerations received therefor, and other facts pertinent to the capitalization of the Ticonderoga are given in Appendix 2.

[fol. 67] **Gross and Net Earnings of the Ticonderoga.**—The income account of the Ticonderoga for the period of corporate operations, February 2, 1891, to date of valuation, shows but one item, income lease of road, stated as \$63,500, which is the amount available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income).

Dividends have been paid out of income by the Ticonderoga aggregating \$22,500.

General Balance Sheet.—The general balance sheet stated by the Ticonderoga, as showing its financial condition on date of valuation, follows:

Assets	
Investments:	
Investments in road and equipment ..	\$60,000.00
Sinking funds	24,000.00
Total	<u>\$84,000.00</u>
Current assets:	
Rents receivable	1,900.00
Grand total	<u>85,900.00</u>
Liabilities	
Stock:	
Common	\$18,500.00
Preferred	11,500.00
Total	<u>30,000.00</u>
Long-term debt:	
Funded debt unmatured	30,000.00
Current liabilities:	
Loans and bills payable	14,253.60
Unmatured interest accrued	900.00
Total	<u>15,153.60</u>
Appropriated surplus:	
Sinking fund reserve	25,000.00
Total liabilities	<u>100,153.60</u>
Corporate surplus:	
Profit and loss debit balance	14,253.60
Total—after deducting deficit	<u>85,900.00</u>

Investment in Road and Equipment.—The Ticonderoga owns no equipment. The investment in road, including land, on date of valuation, is stated in its books to be \$60,000, of which \$45,000 consists of securities issued. The money value of these securities at the [fol. 68] time of entry upon the books of the Ticonderoga is not known and can not be ascertained. Further details will be found in Appendix 2.

Original Cost to Date.—The obtainable data on original cost to date of the common-carrier property of the Ticonderoga, including land, are represented by the foregoing sum shown as the investment in road, namely, \$60,000. In addition to this amount, the records of the carrier show that it has made expenditures for improvements to the property of the Ticonderoga amounting to \$55,833.17, the details of which are shown in Appendix 2.

Cost of Reproduction New, and Cost of Reproduction Less Depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, wholly owned by the Ticonderoga and leased to the carrier, are \$90,078 and \$73,090, respectively.

These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheets which are a part of Appendix 1.

Cost of Lands, Rights of Way, and Terminals at the Time of Their Dedication to Public Use, and Present Value of the Same.—The Ticonderoga owns 11.53 acres of lands, with a present value of \$6,861.80, which are leased to the carrier for common-carrier purposes. The original cost of these lands can not be ascertained.

Property Held for Purposes Other Than Those of a Common Carrier.—The Ticonderoga has no property held for noncarrier purposes.

Aids, Gifts, Grants of Rights of Way, and Donations.—The Ticonderoga received no aids, gifts, grants of rights of way, or donations.

Materials and Supplies.—The Ticonderoga had no materials and supplies on hand on date of valuation.

Final Value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value, as that term is used in the Interstate Commerce Act, of the property of the Ticonderoga, owned but not used, leased to the carrier for common-carrier purposes, is found to be \$82,000.

No other values or elements of value to which specific sums can now be ascribed are found.

No working capital, including material and supplies, is found to be owned or used by the Ticonderoga.

The Chateaugay and Lake Placid Railway Company

(The Placid)

Location and General Description of Property.—The railroad of The Chateaugay and Lake Placid Railway Company, hereinafter called the Placid, is a single track, standard gauge, steam railroad, [fol. 69] located in the north-central part of New York. The owned mileage extends north and east from Lake Placid to Dannemora, a distance of 63.486 miles. The Placid also owns yard and side tracks totaling 27.228 miles. Its road thus embraces 90.713 miles of all tracks owned.

In Appendix 1 will be found a general description of the property of the Placid.

Jointly Used Property.—The Placid has no jointly owned and used property.

Traffic Connections.—The traffic connections will be found in Appendix 1.

Physical Conditions Affecting Construction.—In Appendix 1 are statements as to the topography, geology and climate, as affecting the construction of the carrier's railroad, which are applicable to the Placid.

Economic Conditions Relating to Traffic.—Information with respect to this subject will be found in Appendix 1.

Corporate History.—The Placid is a corporation of New York, with its principal office at New York City. It was incorporated on July 24, 1903, under an agreement dated July 10, 1903, under the general laws of New York, and is a consolidation of the Chateaugay, the Chateaugay Railway, and the Saranac. Its organization was perfected July 28, 1903.

The detailed facts as to the development of the fixed physical property are given in Appendix 2.

History of Corporate Financing, Capital Stock, and Long-term Debt.—The Placid has issued and assumed a total of \$3,794,000 in stocks and in bonds, of which \$3,450,000 in capital stock was outstanding on date of valuation. Of the stock \$450,000 is in common and \$3,000,000 in preferred.

The Placid is controlled by the carrier through ownership of a majority of the outstanding capital stock.

The purposes for which the capital securities were issued and the apparent considerations received therefor, and other facts pertinent to the capitalization of the Placid, are given in Appendix 2.

Gross and Net Earnings of the Placid.—The result of the corporate operations of the Placid from July 24, 1903, to date of Valuation, is stated in detail in Appendix 2, and is summarized as follows:

Income from lease of road	\$894,928.65
During the same period taxes assessed (railway tax accruals) amounted to	65,886.98
Resulting in gross income for the period (gross income) of	\$829,041.67

[fol. 70] Resulting in that amount being available for the payment of interest and dividends and for other corporate purposes (chargeable to deductions from gross income and to disposition of net income).

Dividends have been paid by the Placid aggregating \$764,068.78.

General Balance Sheet.—The general balance sheet stated by the Placid, as showing its financial condition on date of valuation, follows:

Assets

Investments:

Investment in road and equipment	\$3,450,000.00
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Deferred assets:

Other deferred assets	5,317.11
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Total	<u>3,455,317.11</u>
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Liabilities

Stock:

Capital stock	\$3,450,000.00
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Corporate surplus:

Profit and loss credit balance	5,317.11
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Total	<u>3,455,317.11</u>
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Investment in Road and Equipment.—The Placid owns no equipment. The investment in road, including land, on date of valuation, is stated in its report to us to be \$3,450,000. If certain readjustments were made, as detailed in Appendix 2, this account would be decreased to \$3,382,998.62, of which \$794,000 consists of the par value of securities issued or assumed. The money value of these securities at the time of entry upon the books of the Placid is not known, and cannot be ascertained.

Original Cost to Date.—The original cost to date of the common-carrier property of the Placid cannot be ascertained owing to the inadequacy of the records. The obtainable data on the outlay follows:

Chateaugay:

Recorded money outlay	\$265,233.62
Short-term notes issued	<u>1,120.14</u>

Saranac:

Recorded money outlay	156,715.60
Capital stock issued, par value	<u>200,000.00</u>

Placid:

Recorded money outlay	<u>2,588,998.63</u>
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Less deductions not assignable specifically to any one or more of the above classes of outlay	<u>18,090.62</u>
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The carrier:

Recorded money outlay	19,506.01
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[fol. 71] The foregoing does not include the outlay made by the Chateaugay Railway in creating and improving its property to date of acquisition by the Placid, as there were no obtainable accounting records. The annual report of the Board of Railroad Commissioners of the state of New York for year ended June 30, 1903, includes the reported outlay as follows:

Chateaugay Railway:

Capital stock issued, par value	\$168,000
Funded debt issued, par value	200,000

Cost of Reproduction New and Cost of Reproduction Less Depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, wholly owned by the Placid and leased to the carrier, are \$2,786,284 and \$2,379,529, respectively.

These amounts classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheet which is a part of Appendix 1.

Cost of Lands, Rights of Way, and Terminals at the Time of Their Dedication to Public Use, and Present Value of the Same.—The Placid owns 945.41 acres of land, with a present value of \$101,948.01, which are leased to the carrier for common-carrier purposes. The total original cost of these lands cannot be ascertained, as the accounting records are not obtainable. Data respecting original cost will be found in Appendix 2.

Property Held for Purposes Other Than Those of a Common Carrier.—The Placid owns 138.26 acres of lands devoted to non-carrier purposes with a present value, including the value of improvements thereon, of \$6,171.50. The total original cost of these lands cannot be ascertained. The obtainable costs will be found in Appendix 2.

On lands leased to the carrier for common-carrier purposes are noncarrier structures with a present value of \$500.

Aids, Gifts, Grants of Rights of Way, and Donations.—The Placid owns the following carrier and noncarrier lands, which it acquired through aids, the title to these lands being conveyed by deeds reciting nominal or no considerations:

Classification	Acres	Present value
Wholly owned and leased to the carrier	151.32	\$2,905.00
Wholly owned but held for noncarrier purposes	44.84	224.20

The foregoing totals are included in the preceding summaries of the present value of lands owned by the Placid. The value of these lands at the time acquired cannot be determined.

[fol. 72] Materials and Supplies.—The Placid had no materials and supplies on hand on date of valuation.

Final Value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value,

and all other matters which appear to have a bearing upon the value here reported, the value, as that term is used in the Interstate Commerce Act, of the property of the Placid, owned but not used, leased to the carrier for common-carrier purposes, is found to be \$2,550,000.

No other values or elements of value to which specific sums can now be ascribed are found.

No working capital, including material and supplies, is found to be owned or used by the Placid.

The Plattsburgh and Dannemora Railroad

(The Dannemora)

Location and General Description of Property.—The railroad of the Plattsburgh and Dannemora Railroad, hereinafter called the Dannemora, is a single track, standard gauge, steam railroad located in the northeastern part of New York. The owned mileage extends eastwardly from Dannemora to Bluff Point, a distance of 16,336 miles. The Dannemora also owns yard and side tracks totaling 7,969 miles. Its road thus embraces 24,305 miles of all tracks owned.

In Appendix 1 will be found a general description of the property of the Dannemora.

Jointly Used Property.—The Dannemora has no jointly owned and used property.

Traffic Connections.—The traffic connections will be found in Appendix 1.

Physical Conditions Affecting Construction.—In Appendix 1 are statements as to the topography, geology, and climate, as affecting the construction of carrier's railroad, which are applicable to the Dannemora.

Economic Conditions Relating to Traffic.—Information with respect to this subject will be found in Appendix 1.

Corporate History.—The Dannemora was constructed by the state of New York from Dannemora to Bluff Point under a special act of New York passed April 19, 1878 (Vide Laws of New York for 1878, Chapter 148). This act authorized the Superintendent of State Prisons to construct a narrow gauge railroad from a point near the Clinton state prison at Dannemora, in the county of Clinton, to a point in the town of Plattsburgh in the same county. The purpose of the act was to secure to the state of New York "direct railroad communications between the Clinton prison and the waters of Lake Champlain, and with the existing railroads terminating at or passing through the village of Plattsburgh, for the purpose of reducing the [fol. 73] cost of transportation to and from said prison and securing an increased compensation to the state from the labor of the convicts confined in said prison."

The Dannemora is not an incorporated company, and has never had any organization or principal office other than that given it by the state of New York through its offices. The railroad was operated from date of completion to January 1, 1903, by the Chateaugay Railroad, since which time it has been operated by the carrier.

History of Corporate Financing, Capital Stock, and Long-term Debt.—The Dannemora has issued no capital securities. The construction of its railroad has been made possible through appropriations made by the state of New York. The original act of 1878, authorized \$80,000 for construction purposes. This amount was increased by subsequent acts of 1879, to \$192,865.34, of which amount \$183,035.98 has been recorded as expended, leaving an unexpended balance of \$9,829.36.

Gross and Net Earnings of the Dannemora.—The Dannemora has no income or profit and loss account, as the results of operations have been merged in the accounts of the carrier.

General Balance Sheet.—No records are obtainable from which to submit a general balance sheet statement.

Investment in Road and Equipment.—The investment in road and equipment account of the Dannemora, as recorded in the accounts of the Auditor of Prison Accounts, Comptroller's office, state of New York, on date of valuation, is stated to be \$183,035.98, consisting wholly of cash expenditures made for the purpose of constructing and operating the railroad. The details of this amount will be found in Appendix 2.

Original Cost to Date.—The original cost to date of the common-carrier property of the Dannemora can not be ascertained owing to the inadequacy of the records. Data found in the records of the state of New York give the outlay for creating the original road, exclusive of equipment, as \$149,486, consisting wholly of money outlay, which does not, however, include subsequent additions and betterments to the property. The foregoing may include the cost of lands classified by us as noncarrier and as partly carrier and partly noncarrier.

Cost of Reproduction New and Cost of Reproduction Less Depreciation.—The cost of reproduction new and cost of reproduction less depreciation of all common-carrier property, other than land, wholly owned by the Dannemora and leased to the carrier, are \$570,274 and \$478,158, respectively.

These amounts, classified in conformity with the classification of expenditures for road and equipment as prescribed by us, are shown in the summary sheets which are a part of Appendix 1.

Cost of Lands, Rights of Way, and Terminals at the Time of Their Dedication to Public Use, and Present Value of the Same.—The Dannemora owns 157.74 acres of lands, with a present value of \$4,141.05, which are leased to the carrier for common-carrier purposes. The total original cost of these lands can not be ascertained, as the accounting records are not obtainable. Information respecting original cost will be found in Appendix 2.

[fol. 74] **Property Held for Purposes Other than Those of a Common Carrier.**—The Dannemora owns 17.66 acres of lands classified as noncarrier, with a present value, including the value of improvements thereon, of \$496. The original cost of these lands can not be ascertained. Information respecting original cost will be found in Appendix 2.

Aids, Gifts, Grants of Rights of Way, and Donations.—Of the noncarrier lands owned by the Dannemora, 1.66 acres, with a present value of \$8.30, were acquired through aids, the title to this land being conveyed by deeds reciting nominal considerations only. The value of this land at the time acquired can not be ascertained.

Materials and Supplies.—The Dannemora had no materials and supplies on hand on date of valuation.

Final Value.—After careful consideration of all the facts herein contained, including appreciation, depreciation, going-concern value, and all other matters which appear to have a bearing upon the value here reported, the value, as that term is used in the Interstate Commerce Act, of the property of the Dannemora, owned but not used, leased to the carrier for common-carrier purposes, is found to be \$500,000.

No other values or elements of value to which specific sums can now be ascribed are found.

No working capital, including material and supplies, is found to be owned or used by the Dannemora.

In General

With respect to each of the foregoing carriers embraced in this proceeding, in addition to the other matters stated, the following paragraphs apply as a part of each of the respective tentative valuations:

Appendices.—Attached hereto and made a part hereof are Appendices 1, 2 and 3. Appendix 1 gives the explanatory text and summary sheets showing the classification of the cost of reproduction new and cost of reproduction less depreciation above set forth, in conformity with the classification of expenditures for road and equipment prescribed by us.

Appendix 2 shows further details as to the development of fixed physical property, history of capital financing, result of corporate operations, investment in road and equipment, original cost to date, miscellaneous physical property, investments in other companies, and leased railway property, with respect to the carrier and the affiliated companies under valuation; excepting those features treated in the text of the report.

Appendix 3 is a statement of the method of determining working capital.

Reference is made to Appendix 3 of the report in Texas Midland Railroad, 1 Val. Rep. 1, 108, which is hereby made a part hereof, for a statement of the methods employed and of the reasons for the differences between the various cost values reported.

[fol. 75] The engineering, land and accounting reports, copies of which have been furnished to interested parties, give the details respecting the figures here reported and are on file in the Bureau of Valuation of the Commission, open to public inspection, and subject to the direction of Congress, and these reports are referred to for greater particularity as to the matters herein stated.

By the Commission, Division 1.

George B. McGinty, Secretary. (Seal.)

[fol. 76]

APPENDIX 1

Explanatory Text

The Carrier and Leased Lines

Topography, Geology and Climate

Topography.—The lines in Pennsylvania and the northern branches in New York state, extending westerly into the Adirondack Mountains, traverse rough and mountainous sections. The remainder, and by far the larger part of the road is situated in a rolling and hilly country. The very northern part of the system lies upon a water-shed draining northerly into the St. Lawrence River. The remaining parts are situated on a water-shed whose principal streams flow in a southwardly direction. The railroad reaches tidewater at Albany, N. Y., on the Hudson River. Its greatest altitude is about 1,900 feet, at Lake Placid, N. Y. The northern part of the main line follows the shores of Lake Champlain, while the central and southern portions generally cut across the large drainage systems.

Geology.—The territory covered by the road is generally typical of areas at one time glaciated. The soil consists principally of loam, sand, gravel and clay, with boulders scattered more or less freely through the glacial deposits. The ledge rock is usually rather hard, and is composed of many different kinds of materials. Sandstone is more or less prevalent throughout the entire territory. Granite and limestone are prevalent generally in the central and northern sections, and shale and slate in the central and southern sections.

Climate.—The temperature ranges from 100 degrees above to 40 degrees below zero. The normal annual rainfall is 35 to 41 inches; the average length of the crop growing season, 140 to 155 days. The higher temperature and the higher values for the annual precipitation and length of crop growing season prevail in the southern parts of the region and decrease toward the north. The winters of the northern parts are rather long and severe.

Economic Conditions Relating to Traffic

The railroad is, in Pennsylvania, entirely situated among extensively worked anthracite coal fields, constituting one of the most important industrial regions reached by the carrier. At and in the vicinities of the cities of Albany, Schenectady and Troy, are located many and various manufacturing plants, some of which are quite large and important. In addition, small industries are scattered, rather thinly, along the remainder of the road. Stone quarries producing sandstone, limestone, granite and marble are more or less prevalent in the state of New York, and in the vicinity of Lake Champlain there are a number of iron ore mines. The principal industrial products are coal, clothing, electrical appliances, and the products of the stone quarries.

Characteristics of Road

The ruling grades vary from 0.30 of 1 per cent to 3 per cent. The maximum curvature is 16 degrees.

[fol. 77]

Traffic Connections

The carrier has direct connection with other railroads as follows:

Name of carrier	Point of connection
Boston and Maine Railroad	Eagle Bridge, Mechanicsville, and Troy, N. Y.
The Central Railroad Company of New Jersey	Wilkes-Barre and Minooks Junction, Penn.
Central Vermont Railway Company	Rouses Point, N. Y.
Clarendon & Pittsford Railroad Company	Central Rutland and West Rutland, Vt.
Cooperstown	Cooperstown Junction, N. Y.
The Delaware, Lackawanna & Western Railroad Company	Binghamton, N. Y., Plymouth Junction, and Scranton, Penn.
Erie Railroad Company	Binghamton, N. Y., Carbondale, Honesdale, Jefferson Junction and Scranton, Penn.
The Grand Trunk Railway Company of Canada	Moorer's Junction and Rouses Point, N. Y.
Greenwich & Johnsonville Railway Company	Greenwich Junction, N. Y.
Keesville, Ausable Chasm and Lake Champlain Railroad Company	Port Kent, N. Y.
Lake Champlain and Moriah Railroad Company	Port Henry, N. Y.
Lehigh Valley Railroad Company	Owego, N. Y., and Wilkes-Barre, Penn.
Napierville Junction Railway Company	Rouses Point, N. Y.
The New York Central Railroad Company	Albany, Green Island, Loon Lake, Saranac Lake, Schenectady, South Schenectady, Troy, and Voorheesville, N. Y.
New York, Ontario and Western Railway Company	Sidney, N. Y., Carbondale and Jermyn, Penn.

Name of carrier	Point of connection
New York, Susquehanna and Western Railroad Company...	Yatesville, Penn.
The Pennsylvania Railroad Company	Buttonwood and Wilkes-Barre, Penn.
Quebec, Montreal and Southern Railway	Rouses Point, N. Y.
Rutland Railroad Company.....	Fort Ticonderoga, Mooer's Junction, Rouses Point, N. Y., and Rutland, Vt.
Schoharie Valley Railroad.....	Schoharie Junction, N. Y.
The Troy Union Railroad Company	Troy, N. Y.
The Ulster & Delaware Railroad Company	Oneonta, N. Y.
Wilkes-Barre Connecting Railroad Company	Plymouth Junction, at Wilkes-Barre, Penn.

[fol. 78]

Equipment

The carrier owns and uses, and owns but does not use, the following units of equipment:

Wholly owned and used:

	Units
Steam locomotives	472
Freight-train cars	18,838
Passenger-train cars	462
Work equipment	501
Total	<u>20,273</u>

Owned but not used; leased to Carolina, Clinchfield and Ohio Railway:

Passenger-train car	1
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Engineering and General Expenditures

Engineering has been estimated at the percentages stated on accounts 3 to 47, inclusive, as follows:

Property owned by the carrier, the Albany, and the Northern, 4.25 per cent.

Property owned by the Rensselaer, the Saratoga, the Ruthall, the Vermont, the Placid, the Dannemora, and the Ticonderoga, 4.5 per cent.

General expenditures, exclusive of interest, have been estimated on the basis of $1\frac{1}{2}$ per cent upon road accounts 1 to 47, exclusive of account 2. Interest during construction has been estimated for

one-half the construction period, excepting where the construction period is less than six months in which case the construction period has been used, plus three months, at the rate of 6 per cent per annum on all road and general expenditure accounts, excepting accounts 2 and 76, and for three months on all equipment accounts.

Construction Period.—It is estimated that the various sections of the properties involved in this proceeding could be constructed as follows:

	Months
Carrier	3-36
Albany	32
Rensselaer	18-24
Saratoga	24
Ruthall	18
Vermont	24
Northern	30
Placid	20
Dannemora	20
Ticonderoga	6

Summaries

The Carrier

Wholly Owned and Used, Including Carrier's Portion of Jointly Owned Minor Facilities

[fol. 79]

All Sections

[fol. 79]

All Sections

Cost of reproduction

Acct.

Classes

New

Less depreciation

I. Road:

1 Engineering \$1,110,233 \$1,110,233

3 Grading 9,547,451 9,439,110

5 Tunnels and subways 79,507 73,021

6 Bridges, trestles, and culverts..... 2,606,989 2,013,342

8 Ties 1,503,422 751,709

9 Rails 2,172,097 1,882,867

10 Other track material 607,642 417,028

11 Ballast 963,765 650,150

12 Track laying and surfacing 1,293,103 913,404

13 Right-of-way fences 219,992 110,637

14 Snow and sand fences and snowsheds 1,677 838

15 Crossings and signs 318,971 239,461

16 Station and office buildings 1,944,796 1,538,322

17 Roadway buildings..... 92,327 44,501

18 Water stations 151,094 98,552

19 Fuel stations 135,885 94,353

20 Shops and engine houses 2,054,783 1,626,581

All Sections—Continued

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
23	Wharves and docks	49,656	36,788
24	Coal and ore Wharves	6,884	3,901
25	Gas producing plants	3,348	3,024
26	Telegraph and telephone lines	88,436	58,523
27	Signals and interlockers	464,660	347,871
29	Power plant buildings	72,218	62,040
31	Power transmission systems	5,750	5,060
32	Power distribution systems	148,560	136,935
33	Power line poles and fixtures	4,525	3,895
36	Paving	7,038	4,208
37	Roadway machines	43,139	29,060
38	Roadway small tools	13,638	6,820
43	Other expenditures-Road	16,865	16,191
44	Shop machinery	1,342,814	916,657
45	Power plant machinery	162,082	128,422
Total, 1, and 3 to 47, inclusive		<u>27,233,347</u>	<u>22,763,504</u>
II. Equipment:			
51	Steam locomotives	8,020,810	5,177,911
53	Freight-train cars	16,951,852	11,212,868
54	Passenger-train cars	2,407,860	1,146,064
57	Work equipment	651,253	399,869
Total, 51 to 58, inclusive...		<u>28,031,775</u>	<u>17,936,712</u>
III. General Expenditures:			
71	Organization expenses	408,256	340,185
72	General officers and clerks		
73	Law		
[fol. 80]			
74	Stationery and printing		
75	Taxes	2,759,332	2,208,986
77	Other expenditures-General		
76	Interest during construction		
Total, 71 to 77, inclusive ..		<u>3,167,588</u>	<u>2,549,171</u>
Grand total, 1, and 3 to 77, inclusive		<u>58,432,710</u>	<u>43,249,387</u>

Wholly Owned and Used, Including Carrier's Portion of Jointly
Owned Minor Facilities

In New York

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
I. Road:			
1	Engineering	\$845,500	\$845,500
3	Grading	7,832,233	7,778,492
5	Tunnels and subways	79,507	73,021
6	Bridges, trestles, and culverts.....	1,958,743	1,497,170
8	Ties	1,040,142	520,069
9	Rails	1,507,931	1,310,374
10	Other track material	392,194	274,946
11	Ballast	747,342	520,296
12	Track laying and surfacing	940,640	670,205
13	Right-of-way fences	206,314	104,401
14	Snow and sand fences and snowsheds	489	244
15	Crossings and signs	234,525	178,734
16	Station and office buildings	1,397,551	1,153,780
17	Roadway buildings.....	55,369	27,150
18	Water stations	80,015	49,883
19	Fuel stations	92,293	70,227
20	Shops and engine houses	1,331,952	1,137,111
23	Wharves and docks	49,656	36,788
24	Coal and ore Wharves	6,884	3,901
25	Gas producing plants	3,348	3,024
26	Telegraph and telephone lines	46,009	31,197
27	Signals and interlockers	364,702	273,737
29	Power plant buildings	40,806	36,292
31	Power transmission systems	795	775
32	Power distribution systems	137,640	129,030
33	Power line poles and fixtures	2,460	2,240
36	Paving	7,038	4,208
37	Roadway machines	37,923	25,542
38	Roadway small tools	10,309	5,155
43	Other expenditures-Road	16,865	16,191
44	Shop machinery	1,156,758	802,013
45	Power plant machinery	115,683	96,118
Total, 1, and 3 to 47, inclusive		20,739,616	17,677,814

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
[fol. 81]	III. General expenditures:		
71	Organization expenses	311,094	264,430
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes		
77	Other expenditures-General	1,652,311	1,404,464
76	Interest during construction		
	Total, 71 to 77, inclusive ..	1,963,405	1,668,894
	Grand total, 1, and 3 to 77, inclusive	22,703,021	19,346,708

Wholly Owned and Used, Including Carrier's Portion of Jointly Owned Minor Facilities

In Pennsylvania

I. Road:

1	Engineering	\$262,930	\$262,930
3	Grading	1,715,218	1,660,618
6	Bridges, trestles, and culverts	648,246	516,172
8	Ties	463,280	231,640
9	Rails	664,166	572,493
10	Other track material	215,448	142,082
11	Ballast	216,423	129,854
12	Track laying and surfacing	352,463	243,199
13	Right-of-way fences	13,678	6,236
14	Snow and sand fences and snowsheds	1,188	594
15	Crossings and signs	84,446	60,727
16	Station and office buildings	509,301	356,084
17	Roadway buildings	36,958	17,351
18	Water stations	71,079	48,669
19	Fuel stations	43,592	24,126
20	Shops and engine houses	722,831	489,470
26	Telegraph and telephone lines	42,427	27,326
27	Signals and interlockers	99,958	74,134
29	Power plant buildings	31,412	25,748
31	Power transmission systems	4,955	4,285
32	Power distribution systems	10,920	7,905
33	Power line poles and fixtures	2,065	1,655
37	Roadway machines	3,651	2,500
38	Roadway small tools	3,329	1,665
44	Shop machinery	183,160	113,535
45	Power plant machinery	46,399	32,304
Total, 1, and 3 to 47, inclusive		6,449,523	5,053,302

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
[fol. 82] III. General expenditures:			
71	Organization expenses	96,499	75,269
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes		
77	Other expenditures-General	685,871	534,923
76	Interest during construction		
Total, 71 to 77, inclusive ..		782,370	610,192
Grand total, 1, and 3 to 77, inclusive		7,231,893	5,663,494

Wholly Owned and Used

In Vermont

I. Road:

1	Engineering	\$190	\$190
37	Roadway machines	1,565	1,018
44	Shop machinery	2,896	1,109
	Total, 1, and 3 to 47, inclusive	4,651	2,317

III. General Expenditures:

71	Organization expenses	70	35
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes		
77	Other expenditures-General	71	36
76	Interest during construction		
	Total, 71 to 77, inclusive ..	141	71
	Grand total, 1, and 3 to 77, inclusive	4,792	2,388

[fol. 83] Not Allocated to States

I. Road:

1	Engineering	\$1,613	\$1,613
16	Station and office buildings	37,944	28,458
	Total, 1, and 3 to 47, inclusive	39,557	30,071

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
II. Equipment:			
51	Steam locomotives	8,020,810	5,177,911
53	Freight-train cars	16,951,852	11,212,868
54	Passenger-train cars	2,407,860	1,146,064
57	Work equipment	651,253	399,869
Total, 51 to 58, inclusive...		28,031,775	17,936,712
III. General Expenditures:			
71	Organization expenses	593	451
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes		
77	Other expenditures-General	421,079	269,563
76	Interest during construction		
Total, 71 to 77, inclusive ..		421,672	270,014
Grand total, 1, and 3 to 77, inclusive		28,493,004	18,236,797
Wholly Owned but not Used; Leased to the Champlain Transportation Company			
In New York			
I. Road:			
1	Engineering	\$428	\$428
16	Station and office buildings	1,595	1,017
23	Wharves and docks	8,506	4,630
Total, 1, and 3 to 47, inclusive		10,529	6,075
III. General Expenditures:			
71	Organization expenses	158	92
72	General officers and clerks		
[fol. 84]	Law		
74	Stationery and printing		
75	Taxes		
77	Other expenditures-General	160	93
76	Interest during construction		
Total, 71 to 77, inclusive ..		318	185
Grand total, 1, and 3 to 77, inclusive		10,847	6,260

Wholly Owned but not Used; Leased to Carolina, Clinchfield and Ohio Railway

Not Allocated to States

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
II. Equipment:			
54	Passenger-train cars	\$25,170	\$21,546
	Total, 51 to 58, inclusive . . .	<u>25,170</u>	<u>21,546</u>
III. General Expenditures:			
76	Interest during construction	378	325
	Total, 71 to 77, inclusive . .	<u>378</u>	<u>325</u>
	Grand total, 1, and 3 to 77, inclusive	25,548	21,871

Used but not Owned, Including the Albany's Portion of Jointly Owned Minor Facilities; Leased from the Albany

In New York

I. Road:

1	Engineering	\$544,087	\$544,087
3	Grading	3,540,639	3,522,806
5	Tunnels and subways	235,845	213,577
6	Bridges, trestles, and culverts.....	1,627,585	1,282,163
[fol. 85]			
8	Ties	940,150	470,075
9	Rails	1,551,130	1,370,240
10	Other track material	399,283	277,914
11	Ballast	569,854	367,910
12	Track laying and surfacing	774,717	557,796
13	Right-of-way fences	92,011	35,408
14	Snow and sand fences and snowsheds	1,673	836
15	Crossings and signs	227,500	176,051
16	Station and office buildings	693,675	406,470
17	Roadway buildings.....	84,705	37,977
18	Water stations	118,375	80,053
19	Fuel stations	156,269	89,237
20	Shops and engine houses	1,043,830	705,525
24	Coal and ore Wharves	162,592	103,353
26	Telegraph and telephone lines	76,459	42,204
27	Signals and interlockers	365,624	272,065

In New York—Continued

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
29	Power plant buildings	32,775	26,218
31	Power transmission systems	3,350	2,950
32	Power distribution systems	13,300	8,810
33	Power line poles and fixtures	2,285	1,375
36	Paving	13,528	7,382
38	Roadway small tools	5,597	2,799
45	Power plant machinery	69,304	51,582
Total, 1, and 3 to 47, inclusive		13,346,142	10,656,863
III. General Expenditures:			
71	Organization expenses	200,192	160,154
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes		
77	Other expenditures-General	1,286,902	1,029,522
76	Interest during construction		
Total, 71 to 77, inclusive ..		1,487,094	1,189,676
Grand total, 1, and 3 to 77, inclusive		14,833,236	11,846,539

Used but not Owned, Including the Rensselaer's Portion of Jointly Owned Minor Facilities; Leased from the Rensselaer

All Sections

I. Road:

1	Engineering	\$420,417	\$420,417
[fol. 86]			
3	Grading	2,625,371	2,612,594
5	Tunnels and subways	109,949	85,131
6	Bridges, trestles, and culverts	1,563,596	1,131,105
8	Ties	741,005	370,503
9	Rails	1,109,607	953,469
10	Other track material	280,621	187,060
11	Ballast	542,500	397,609
12	Track laying and surfacing	648,658	463,079
13	Right-of-way fences	84,062	38,770
15	Crossings and signs	132,634	97,357

All Sections—Continued

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
16	Station and office buildings	535,337	345,400
17	Roadway buildings	67,660	32,695
18	Water stations	61,608	39,990
19	Fuel stations	28,387	24,526
20	Shops and engine houses	504,115	264,803
23	Wharves and docks	20,883	14,733
24	Coal and ore Wharves	55,045	25,672
26	Telegraph and telephone lines	37,437	25,802
27	Signals and interlockers	179,697	135,404
31	Power transmission systems	1,360	1,310
32	Power distribution systems	4,765	4,100
33	Power line poles and fixtures	1,195	910
36	Paving	1,450	725
38	Roadway small tools	4,454	2,228
46	Power substation apparatus	1,115	900
Total, 1, and 3 to 47, inclusive		9,763,018	7,676,353
III. General Expenditures:			
71	Organization expenses	146,446	115,692
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes		
77	Other expenditures-General	725,715	573,315
76	Interest during construction		
Total, 71 to 77, inclusive ..		872,161	689,007
Grand total, 1, and 3 to 77, inclusive		10,635,179	8,365,362

Used but not Owned, Including the Rensselaer's Portion of Jointly Owned Minor Facilities; Leased from the Rensselaer

[fol. 87]

In New York

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
I. Road:			
1	Engineering	\$370,934	\$370,934
3	Grading	2,265,536	2,253,446
5	Tunnels and subways	109,949	85,134
6	Bridges, trestles, and culverts	1,407,441	1,019,669
8	Ties	635,895	317,948
9	Rails	983,367	848,488
10	Other track material	249,043	165,578
11	Ballast	465,183	344,049
12	Track laying and surfacing	549,795	395,852
13	Right-of-way fences	61,697	27,659
15	Crossings and signs	106,766	77,800
16	Station and office buildings	475,053	303,248
17	Roadway buildings	61,685	30,434
18	Water stations	50,479	34,203
19	Fuel stations	28,387	24,526
20	Shops and engine houses	488,721	258,574
23	Wharves and docks	20,883	14,733
24	Coal and ore Wharves	55,045	25,672
26	Telegraph and telephone lines	36,193	24,785
27	Signals and interlockers	178,133	134,262
31	Power transmission systems	1,360	1,310
32	Power distribution systems	4,765	4,169
33	Power line poles and fixtures	1,195	910
36	Paving	1,450	725
38	Roadway small tools	3,841	1,921
46	Power substation apparatus	1,115	900
Total, 1, and 3 to 47, inclusive		8,613,911	6,766,920
III. General Expenditures:			
71	Organization expenses	129,209	102,075
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes		
76	Other expenditures-General	655,734	518,030
77	Interest during construction		
Total, 71 to 77, inclusive		784,943	620,105
Grand total, 1, and 3 to 77, inclusive		9,398,854	7,387,025

Used but not Owned, Including the Rensselaer's Portion of Jointly
Owned Minor Facilities; Leased from the Rensselaer

In Vermont

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
I. Road:			
1	Engineering	\$49,483	\$49,483
3	Grading	359,835	359,148
[fol. 88]			
6	Bridges, trestles, and culverts.....	156,155	111,436
8	Ties	105,110	52,555
9	Rails	126,240	104,981
10	Other track material	31,578	21,482
11	Ballast	77,317	53,560
12	Track laying and surfacing	98,863	67,227
13	Right-of-way fences	22,365	11,111
15	Crossings and signs	25,868	19,557
16	Station and office buildings	60,284	42,152
17	Roadway buildings.....	5,975	2,261
18	Water stations	11,219	5,787
20	Shops and engine houses	15,394	6,229
26	Telegraph and telephone lines	1,244	1,017
27	Signals and interlockers	1,564	1,142
38	Roadway small tools	613	307
Total, 1, and 3 to 47, inclusive		1,149,107	909,435
III. General Expenditures:			
71	Organization expenses	17,237	13,617
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes	69,981	55,285
77	Other expenditures-General		
76	Interest during construction		
Total, 71 to 77, inclusive ..		87,218	68,902
Grand total, 1, and 3 to 77, inclusive		1,236,325	978,337

Used but not Owned, Including the Saratoga's Portion of Jointly
Owned Minor Facilities; Leased from the Saratoga

In New York

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
I. Road:			
1	Engineering	\$99,417	\$99,417
3	Grading	324,167	314,563
6	Bridges, trestles, and culverts.....	459,033	387,816
8	Ties	179,861	90,012
9	Rails	264,118	225,090
10	Other track material	79,053	52,713
11	Ballast	110,773	74,908
12	Track laying and surfacing	145,119	105,937
13	Right-of-way fences	13,866	6,053
[fol. 89]			
15	Crossings and signs	55,681	39,703
16	Station and office buildings	419,654	310,862
17	Roadway buildings.....	6,448	3,546
18	Water stations	24,949	21,324
19	Fuel stations	11,419	7,821
20	Shops and engine houses	39,226	19,428
26	Telegraph and telephone lines	6,825	5,325
27	Signals and interlockers	62,031	44,025
29	Power plant buildings	4,299	2,719
32	Power distribution systems	1,525	1,025
33	Power line poles and fixtures	80	65
38	Roadway small tools	1,150	575
Total, 1, and 3 to 47, inclusive		<u>2,308,694</u>	<u>1,812,927</u>
III. General Expenditures:			
71	Organization expenses	34,630	27,358
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes		
77	Other expenditures-General	175,749	138,842
76	Interest during construction		
Total, 71 to 77, inclusive ..		<u>210,379</u>	<u>166,200</u>
Grand total, 1, and 3 to 77, inclusive		<u>2,519,073</u>	<u>1,979,127</u>

Used but not Owned; Leased from the Rutland

In Vermont

		Cost of reproduction	
Acct.	Classes	New	Less depreciation
I. Road:			
1	Engineering	\$11,501	\$11,501
3	Grading	86,074	85,773
6	Bridges, trestles, and culverts.....	34,594	24,225
8	Ties	21,175	10,588
9	Rails	25,944	22,868
10	Other track material	7,196	5,049
11	Ballast	16,483	11,111
12	Track laying and surfacing	21,779	15,245
13	Right-of-way fences	4,282	2,141
15	Crossings and signs	11,474	8,368
16	Station and office buildings	21,882	11,429
17	Roadway buildings.....	854	255
[fol. 90]			
20	Shops and engine houses	2,759	1,433
26	Telegraph and telephone lines	339	264
27	Signals and interlockers	609	443
38	Roadway small tools	128	61
Total, 1, and 3 to 47, inclusive		267,073	210,757
III. General Expenditures:			
71	Organization expenses	4,006	3,165
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes		
76	Other expenditures-General	16,265	12,849
76	Interest during construction		
Total, 71 to 77, inclusive ..		20,271	16,014
Grand total, 1, and 3 to 77, inclusive		287,344	226,771

Used but not Owned; Leased from the Vermont

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
	In New York		
	I. Road:		
1	Engineering	\$60,016	\$60,016
3	Grading	275,045	273,322
6	Bridges, trestles, and culverts	310,084	244,262
8	Ties	100,129	50,065
9	Rails	157,095	133,010
10	Other track material	47,766	30,312
11	Ballast	76,633	61,154
12	Track laying and surfacing	86,026	61,939
13	Right-of-way fences	8,118	4,058
15	Crossings and signs	104,229	84,342
16	Station and office buildings	79,341	53,095
17	Roadway buildings	14,569	4,557
18	Water stations	2,739	1,658
20	Shops and engine houses	1,157	557
26	Telegraph and telephone lines	8,117	6,519
27	Signals and interlockers	59,217	48,928
31	Power transmission systems	520	500
32	Power distribution systems	300	280
33	Power line poles and fixtures	190	170
36	Paving	1,826	913
[fol. 91]			
38	Roadway small tools	593	297
Total, 1, and 3 to 47, inclusive		<u>1,393,710</u>	<u>1,119,954</u>
III. General Expenditures:			
71	Organization expenses	20,906	16,725
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes		
77	Other expenditures-General	106,096	84,877
76	Interest during construction		
Total, 71 to 77, inclusive ..		<u>127,002</u>	<u>101,602</u>
Grand total, 1, and 3 to 77, inclusive		<u>1,520,712</u>	<u>1,221,556</u>

Used but not Owned, Including the Northern's Portion of Jointly
Owned Property; Leased from the Northern

In Pennsylvania

		Cost of reproduction	
Acct.	Classes	New	Less depreciation
I. Road:			
1	Engineering	\$147,612	\$147,612
3	Grading	959,484	930,337
6	Bridges, trestles, and culverts.....	570,515	431,695
8	Ties	292,919	146,459
9	Rails	435,764	378,802
10	Other track material	151,866	100,644
11	Ballast	162,129	97,513
12	Track laying and surfacing	217,937	150,377
13	Right-of-way fences	2,319	1,159
15	Crossings and signs	90,761	74,887
16	Station and office buildings	311,107	221,682
17	Roadway buildings.....	4,829	2,805
18	Water stations	18,390	12,871
19	Fuel stations	8,713	4,256
20	Shops and engine houses	59,145	35,639
22	Storage warehouses	27,000	10,260
26	Telegraph and telephone lines	15,703	9,999
27	Signals and interlockers	139,091	97,930
29	Power plant buildings	1,189	790
31	Power transmission systems	320	310
32	Power distribution systems	2,080	1,260
33	Power line poles and fixtures	220	200
[fol. 92]			
38	Roadway small tools	1,721	861
Total, 1, and 3 to 47, inclusive		3,620,834	2,858,348
III. General Expenditures:			
71	Organization expenses	54,313	42,907
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes	330,763	261,303
76	Other expenditures-General		
76	Interest during construction		
Total, 71 to 77, inclusive ..		385,076	304,210
Grand total, 1, and 3 to 77, inclusive		4,005,910	3,162,558

Used by not Owned; Leased from the Placid
In New York

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
I. Road:			
1	Engineering	\$110,996	\$110,996
3	Grading	1,001,154	998,818
6	Bridges, trestles, and culverts.....	285,583	238,170
8	Ties	212,567	106,284
9	Rails	309,790	276,705
10	Other track material	74,235	50,628
11	Ballast	134,872	100,571
12	Track laying and surfacing	186,740	136,320
13	Right-of-way fences	22,423	11,211
15	Crossings and signs	11,434	8,126
16	Station and office buildings	162,776	115,459
17	Roadway buildings.....	6,358	4,318
18	Water stations	24,153	16,253
19	Fuel stations	271	245
20	Shops and engine houses	25,097	22,054
26	Telegraph and telephone lines	4,238	2,883
27	Signals and interlockers	2,163	1,624
32	Power distribution systems	200	195
38	Roadway small tools	2,516	1,258
Total, 1, and 3 to 47, inclusive		<u>2,577,566</u>	<u>2,202,118</u>
[fol. 93] III. General Expenditures:			
71	Organization expenses	38,663	32,864
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes		
77	Other expenditures-General	170,055	144,547
76	Interest during construction		
Total, 71 to 77, inclusive ..		<u>208,718</u>	<u>177,411</u>
Grand total, 1, and 3 to 77, inclusive		<u>2,786,284</u>	<u>2,379,529</u>

Used but not Owned; Leased from the Dannemora
In New York

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
I. Road:			
1	Engineering	\$22,718	\$22,718
3	Grading	192,045	191,982
6	Bridges, trestles, and culverts.....	35,166	29,160
8	Ties	57,538	28,770
9	Rails	83,430	74,220
10	Other track material	18,531	12,715
11	Ballast	32,925	24,552
12	Track laying and surfacing	49,884	36,415
13	Right-of-way fences	14,644	7,322
15	Crossings and signs	6,105	5,058
16	Station and office buildings	7,066	3,929
17	Roadway buildings.....	1,595	1,106
18	Water stations	4,109	3,140
26	Telegraph and telephone lines	914	599
27	Signals and interlockers	624	458
38	Roadway small tools	262	131
Total, 1, and 3 to 47, inclusive		<u>527,556</u>	<u>442,275</u>
III. General Expenditures:			
71	Organization expenses	7,913	6,647
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes		
77	Other expenditures-General		
[fol. 94]			
76	Interest during construction	34,805	29,236
Total, 71 to 77, inclusive ..		<u>42,718</u>	<u>35,883</u>
Grand total, 1, and 3 to 77, inclusive		570,274	478,158

Used but not Owned; Leased from the Ticonderoga

In New York

Acct.	Classes	Cost of reproduction	
		New	Less depreciation
I. Road:			
1	Engineering	\$3,710	\$3,710
3	Grading	13,685	13,676
6	Bridges, trestles, and culverts.....	11,003	10,315
8	Ties	7,682	3,841
9	Rails	10,824	9,284
10	Other track material	5,623	4,108
11	Ballast	4,478	2,809
12	Track laying and surfacing	6,736	4,715
13	Right-of-way fences	188	94
15	Crossings and signs	1,251	788
16	Station and office buildings	18,390	14,806
17	Roadway buildings.....	339	169
18	Water stations	857	733
20	Shops and engine houses	399	240
26	Telegraph and telephone lines	215	184
27	Signals and interlockers	165	137
38	Roadway small tools	617	309
Total, 1, and 3 to 47, inclusive		86,162	69,918
III. General Expenditures:			
71	Organization expenses	1,292	1,047
72	General officers and clerks		
73	Law		
74	Stationery and printing		
75	Taxes	2,624	2,125
77	Other expenditures-General		
76	Interest during construction		
Total, 71 to 77, inclusive ..		3,916	3,172
Grand total, 1, and 3 to 77, inclusive		90,078	73,090

APPENDIX 2

The Carrier

Corporate History

The corporations whose franchises and properties have gone to make up the present company, and the dates of the changes in those several corporations, are shown in the following table:

Sym- bol No.	Corporate name	Date of incorporation	State	Date of acquisition by successor
1	The Delaware and Hudson Com- pany.	Apr. 28, 1899	N. Y.	Present company.
2	The President, Manager and Com- pany of the Delaware and Hud- son Canal Company.	Mch. 13, 1823 Apr. 23, 1823	N. Y.	Pa. Name changed to No. 1, Apr. 28, 1899.
3	Adirondack Railway.....	July 7, 1882	N. Y.	Acquired by No. 1 Nov. 5, 1902.
4	Adirondack Company.....	Oct. 24, 1863	N. Y.	Acquired by No. 3 Nov. 24, 1882.
5	Adirondack Estate.....	Aug. 11, 1860	N. Y.	Acquired by No. 4 Nov. 11, 1863.
6	Lake Ontario.....	Apr. 6, 1857	N. Y.	Acquired by No. 5 Aug. 13, 1860.
7	Sackets Harbor and Saratoga Railroad Company.	Feb. 23, 1852	N. Y.	Name changed to No. 6 April 6, 1857.
8	Duanesburgh	July 15, 1873	N. Y.	Acquired by No. 1 Aug. 4, 1903.
9	The Schenectady & Susquehanna Rail Road Company.	Dec. 27, 1869	N. Y.	Acquired by No. 9 July 12, 1873.
10	New York.....	Apr. 8, 1873	N. Y.	Acquired by No. 1 May 23, 1908.
11	New York of 1872.....	Mch. 16, 1872	N. Y.	Acquired by No. 10 April 8, 1873.
12	Whitehall	Feb. 16, 1866	N. Y.	Acquired by No. 10 April 8, 1873.
13	Montreal	Aug. 22, 1868	N. Y.	Acquired by No. 10 April 8, 1873.
14	Plattsburgh	Mch. 28, 1850	N. Y.	Acquired by No. 13 Aug. 20, 1868.
15	Cherry Valley.....	Apr. 10, 1869	N. Y.	Acquired by No. 1 July 17, 1908.
16	Cherry Valley.....	Apr. 15, 1864	N. Y.	Name changed to No. 15 Apr. 10, 1869.
17	Cherry Valley.....	Apr. 10, 1860	N. Y.	Name changed to No. 16, Apr. 15, 1864.

Development of Fixed Physical Property

The road owned by the carrier on date of valuation was acquired as follows:

[fol. 96] Purchased:	Approximate mileage
May 8, 1911, that part of Greenwich & Johnsonville Railway Company extending from Greenwich to Greenwich Junction, N. Y.; constructed by the railroad on a date unknown	10,200

Merger:

November 5, 1902, of the property of Adirondack Railway, Saratoga Springs to North Creek, N. Y.	57,307
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Road opened for operation on the following dates, but by whom constructed is unknown:

Saratoga Springs to Greenfield.....	1865	5,680
Greenfield to Wolf Creek.....	1866	18,756
Wolf Creek to Thurman.....	1869	10,556
Thurman to near Riverside.....	1870	14,556
Near Riverside to North Creek.....	1871	7,759

August 4, 1903, of the property of the Duaneburg, Schenectady to Delanson, N. Y.:

Constructed by the Albany in 1863.....	14,189
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May 23, 1908, of the property of the New York, Lake Station, near Whitehall, to Baldwin:

Ausable Forks to South Junction, and Canada Junction to the New York-Canada line.....	149,169
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Constructed by the Plattsburgh on unknown date and opened for operation as follows:

Plattsburgh to Mooers Junction, July 26, 1852; Mooers Junction to New York-Canada line, September 20, 1852.....	23,000
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Constructed by the Whitehall on the following dates:

Ausable River, near Ausable Forks, to Plattsburgh, 21 miles, in 1869; Fort Ticonderoga to Port Henry, 15 miles, in 1870.....	36,000
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Constructed by the carrier and acquired on following dates:

Lake station to Fort Ticonderoga.....	1873	} 90,169
Port Henry to South Junction.....	1875	
Montcalm Landing to Baldwin.....	1875	
Canada Junction to Rouses Point.....	1876	
Ausable River to Ausable Forks.....	1894	
Rouses Point to New York-Canada line... ..	1906	

Constructed by the Cherry Valley 1869-1870.....	21,340
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242,005

Construction:		Approximate mileage
1829	Honesdale Jct. to Lookout Junction, Penn.....	27.20
1846	Green Ridge to Carbondale, Penn.....	15.32
1846	Archbald to Bushwick, Penn.....	4.96
1863	Vine Street to Green Ridge, Penn.....	1.47
1871	Jefferson Jct. to state line, Penn.....	4.36
1871	State line to Nineveh, N. Y.....	18.225
1877	End of branch to Vine Street, Penn.....	0.598
1881	Glennville to Coons, N. Y.....	9.68
1901	Moreau Junction to South Glens Falls, N. Y.....	4.77
1905	Thurman to Warrensburgh, N. Y.....	3.47
		<hr/> 90.053 <hr/>
Total recorded mileage.....		342.258

[fol. 97] History of Corporate Financing

The records of the carrier disclose no syndicating transactions.

The capital stock and the several classes of long-term debt issued and retired are here stated, with the amount actually outstanding on date of valuation:

Description	Originally issued	Retirements and treasury holdings	Actually outstanding
Capital stock	\$43,279,500.00	\$776,900.00	\$42,502,600
Funded debt	107,322,796.28	43,697,796.28	63,625,000
Total	150,602,296.28	44,474,696.28	106,127,600

The foregoing statement includes \$400 held by or for the carrier, and \$827,000 of funded debt matured carried on the balance sheet on date of valuation as funded debt matured unpaid. The carrier has deposited with the trustees cash for the retirement of the bonds, which had not been presented for redemption to date of valuation.

Capital Stock.—The carrier issued and reacquired capital stock in exchange for the following considerations:

Issued

Par value	Consideration	Recorded value
\$37,284,486.54	Cash: Premium \$2,561,369	
	Discount 3,817,410	\$36,028,445.54
1,549,500.00	Securities of other companies:	
	Premium 1,448,500	2,998,000.00
121,500.00	Retirement of funded debt:	
	Premium 13,500	135,000.00
214,000.00	Miscellaneous physical property.	214,000.00
19,313.46	Payment of interest	19,313.46
30,000.00	Retirement of notes payable . . .	30,000.00
27,500.00	Notes receivable	27,500.00
39,246,300.00	Total issued for considerations . .	39,452,259.00
1,245,300.00	Total issued to the treasury	
2,787,900.00	Total issued in payment of dividends—charged as follows:	
	Profit and loss . . \$2,787,900	
43,279,500.00	Total par value issued	

Reacquired and Retired

776,500.00	Cash (\$417,944.37) in excess of par value	1,194,443.37
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Outstanding

42,503,000.00

The difference between par value of capital stock issued by the carrier and the considerations recorded as received in exchange therefor, [fol. 98] being discount aggregating \$3,817,410 and premiums aggregating \$4,023,369, were charged and credited to profit and loss, respectively.

The difference between the reacquisition cost and the par value of capital stock reacquired by the carrier, being an amount of \$417,944.37, was adjusted by charging the profit and loss account \$105,833.37, and sinking fund \$312,111.

In addition to the stock issued to the treasury, \$1,245,300, the carrier subsequently reacquired a par value of \$323,388 of its own capital stock of which \$320,183 was acquired for \$279,273.40 cash, \$2,505 in exchange for a like amount of loans due and \$700 representing unclaimed shares of stockholders appropriated by the carrier to its own use. Of the total par value of stock thus held in the treasury, \$1,568,688, the carrier retained a par value of \$400 which it carried at a book value of \$411 on date of valuation. The balance of \$1,568,288 was disposed of by the sale of a par value of \$1,285,108 for \$1,402,124.74 cash, and the exchange of \$283,180 in retirement of a like amount of funded debt. The premium of \$127,016.74 received in the sale of capital stock for cash was credited to the profit and loss account.

Funded Debt.—A statement of the funded debt actually outstanding on date of valuation follows:

Title of security	Date of maturity	Actually outstanding
Assumed:		
Adirondack Railway first-mortgage 50-year bonds.....	March 1, 1942	\$1,000,000
Duanesburgh first-mortgage bonds..	Sept. 1, 1924	500,000
Issued:		
Debenture loan of 1894.....	Oct. 1, 1894	3,000
Convertible debenture bonds.....	June 15, 1906	820,000
First lien equipment gold bonds....	July 1, 1922	9,643,000
First and refunding gold bonds....	May 1, 1943	32,204,000
Albany first consolidated guaranteed bonds	Apr. 1, 1906	4,000
Five per cent 20-year convertible bonds	Jan. 15, 1935	14,451,000
First-mortgage bonds of 1877.....	Sept. 1, 1917	5,000,000
Total		63,625,000

The carrier issued, assumed and reacquired funded debt in exchange for the following considerations:

Issued		Recorded value
Par value	Consideration	
\$99,374,657.73	Cash: Premium.... \$86,025.00	
	Discount.... \$3,122,381.98	\$96,338,300.75
1,500,000.00	Acquisition of transportation property	1,500,000.00
[fol. 99]		
3,847,000.00	Retirement of other funded debt..	3,847,000.00
33,000.00	Securities of other companies....	33,000.00
1,138.55	Payment of interest.....	1,138.55
990,000.00	To finance affiliated companies and charged to open account.....	990,000.00
77,000.00	Payment of current liabilities....	77,000.00
1,500,000.00	Unascertainable	1,500,000.00
107,322,796.28	Total issued for considerations....	104,286,439.30
107,322,796.28	Total par value issued.	

Reacquired and Retired

Par value	Consideration	Recorded value
39,270,696.28	Cash: \$173,836.84 less than par value	39,137,518.31
	\$40,658.87 in excess of par value.	
3,847,000.00	Other funded debt issued.....	3,847,000.00
135,000.00	Capital stock issued.....	135,000.00
268,100.00	Capital stock owned.....	268,100.00
114,000.00	Securities of other companies....	114,000.00
63,000.00	Notes payable	63,000.00
43,697,796.28	Total reacquired for considerations	43,564,618.31

Outstanding

63,625,000.00

The difference between the par value of funded debt issued or assumed by the carrier and the consideration recorded as received in exchange therefor, being discounts aggregating \$3,122,381.98 and premiums aggregating \$86,025, together with expenses incurred in the amount of \$187,625.60 in the issuance of such securities, was distributed as follows:

Account	Premium credited	Discount charged	Expense charged
Income—interest	\$5,773.75	\$765.00	.....
Profit and loss.....	80,251.25	3,105,508.28	\$187,625.60
	86,025.00	3,106,273.28	187,625.60
Balance sheet account—			
Discount on funded debt .....	.....	16,108.70	.....
Total	86,025.00	3,122,381.98	187,625.60

The net difference between the par value and the reacquisition cost of funded debt reacquired by the carrier, being an amount of \$133,177.97, was adjusted as detailed below:

Account	Difference between par value and the cost of reacquirement—credited	Difference between the cost of reacquirement and the par value—charged
Income—interest	\$3,432.98	\$1,150.00
Profit and loss.....	170,403.86	39,508.87
Total	173,836.84	40,658.87

[fol. 100] For a detailed statement of the individual capital securities issued or assumed by the carrier, the considerations received therefor, and the securities retired, reference is made to the accounting report hereinbefore mentioned.

Short-term Notes.—In addition to the foregoing capital securities, the carrier at various times issued short-term notes for temporary financing, amounting in the aggregate to \$155,829,247.33, of which \$32,858,720.58 were renewals of due notes. Of the balance of \$122,940,526.79, a total of \$120,266,993.28 has been retired, leaving \$2,703,533.51 outstanding on date of valuation.

The considerations received and given in the issues and retirements were as follows:

Issues	Consideration	Retirements
\$107,718,179.78	Cash	\$120,065,950.21
222,665.49	Other securities	194,080.00
1,523,746.90	Miscellaneous physical property	
10,989,266.37	Working fund advances	
100,000.00	Notes of the Albany assumed	
43,707.36	Advances to the Northern	
25,000.00	Advances to Erie Railroad Company	
150,675.18	Equipment for the Albany	
1,870,510.56	Current liabilities	
	Current assets	487.92
243,572.31	Interest and interest adjustments	439.15
5,030.00	Commission	
22,567.84	Discount charged to profit and loss through interest	
	Written off to profit and loss	6,036.00
55,605.00	Outstanding notes March 1, 1842, transferred from banking department ledger, not obtainable	
<hr/> 122,970,526.79	Total	<hr/> 120,266,993.28

The details of the notes outstanding on date of valuation follow:

\$203,533.51	For two notes at 4 per cent due the Quebec, Montreal and Southern Railway Company.
500,000.00	For demand note with interest at 6 per cent due the Northern New York Development Company.
1,000,000.00	For note at $3\frac{1}{4}$ per cent due Kuhn, Loeb & Company.
1,000,000.00	For note at $3\frac{1}{2}$ per cent due Farmers Loan and Trust Company.

2,703,533.51 Total.

Result of Corporate Operations

Income Account.—The income account of the carrier for year ending on date of valuation, and for the period October 29, 1829, to date of valuation, follows:

[fol. 101] Operating income:		
	Year	Period
Railway operating revenues....	\$25,987,630.82	\$519,628,107.26
Railway operating expenses....	16,444,356.05	344,672,779.13
Net revenue from railway operations	9,543,274.77	174,955,328.13
Railway tax accruals	681,591.95	6,538,930.88
Uncollectible railway revenues..	2,192.60	2,680.57
Railway operating income	8,859,490.22	168,413,716.68
Revenues from miscellaneous operations	14,375,811.39	626,412,055.65
Expenses of miscellaneous operations	12,789,152.48	496,215,867.43
Net revenue from miscellaneous operations....	1,586,658.91	130,196,188.22
Taxes on miscellaneous operating property	484,582.98	3,167,265.76
Miscellaneous operating income	1,102,075.93	127,028,922.46
Total operating income..	9,961,566.15	295,442,639.14
Nonoperating income:		
Hire of equipment	111,904.97	1,932,990.93
Joint facility rent income.....	99,721.49	986,929.94
Income from lease of road.....	114,949.81	2,389,244.41
Miscellaneous rent income.....	136,990.13	1,450,970.46
Miscellaneous nonoperating physical property	27,461.72	1,530,011.80
Separately operated properties..	.....	258,983.21
Dividend income	293,162.24	13,391,948.37
Income from funded securities..	182,832.00	2,579,241.71
Income from unfunded securities and accounts	604,911.49	13,881,124.85
Income from sinking and other reserve funds	157,510.57	556,502.68
Miscellaneous income	969.81	2,681,728.19
Total	1,730,414.23	41,639,676.55
Gross income	11,691,980.38	337,082,315.69

Deductions from gross income:		
	Year	Period
Hire of equipment	381,572.94	973,081.41
Joint facility rents	236,535.38	3,055,986.03
Rent for leased roads	1,880,543.08	94,425,802.59
Miscellaneous rents	6,320.74	818,708.07
Miscellaneous tax accruals	31,813.40	10,022,272.64
Specially operated properties		264,270.35
Interest on funded debt	3,205,593.31	53,924,337.99
Interest on unfunded debt	97,720.60	7,405,592.95
Income transferred to other companies		187,470.32
Miscellaneous income charges	23,010.63	252,443.82
Total	5,863,110.08	171,329,966.17
Net income	5,828,870.30	165,752,349.52

[fol. 102] Disposition of net income:

Appropriations to sinking and other reserves		2,381,031.39
Miscellaneous appropriations	10,454.19	431,639.79
Total appropriations	10,454.19	2,812,671.18
Balance to credit of profit and loss	5,818,416.11	162,939,678.34

If certain delayed income items in the profit and loss account were taken into the income statement for the period from 1829 to date of valuation, the income balance transferred to credit of profit and loss would be decreased to \$158,697,823.04.

The net earnings for the period, if considered in the light of a return on the investment in road and equipment, will be found to have been overstated for the reason that the earnings of the Northern, subsequent to January 1, 1907, and of the Cooperstown of 1891, subsequent to July 1, 1904, have been included in the earnings of the carrier without any deduction for rental of leased roads.

Profit and Loss Account.—The profit and loss account of the carrier, on date of valuation, follows:

Credits:

Credit balance transferred from income.....	\$162,939,678.34
Profit on road and equipment sold.....	39,924.89
Delayed income credits	2,235,941.99
Railway operating revenues	\$306,355.61
Revenues from miscellaneous operations	314,071.83
Income from lease of road	56,439.01
Miscellaneous rent income	3.81
Miscellaneous nonoperating physical property.....	672,019.68
Dividend income	176,650.19
Income from funded securities	40,403.03
Income from unfunded securities and accounts ..	112,807.63
Income from sinking and other reserve funds.....	45,859.94
Railway operating expenses	28,886.12
Railway tax accruals.....	179,903.38
Expenses of miscellaneous operations	51,631.92
Rent for leased roads.....	29,680.00
Miscellaneous rents.....	75,288.70
Separately operated properties—loss	33,151.62
Interest on funded debt	1,177.50
Interest on unfunded debt	68,706.48
Income applied to sinking and other reserve funds	42,905.54
Unrefundable overcharges	444.67
Donations	2,500.00
Miscellaneous credits	24,399,056.71

[fol. 103]

Adjustment and cancellation of balance sheet accounts	2,269,298.81
Cancellation of wages and vouchers payable	17,873.93
Excess of par value over amounts in retirement of funded debt	170,403.86
Profit from sale of investment securities	3,888,486.66
Profit from sale of miscellaneous physical property	470,258.61
Adjustment to par of company's securities reacquired	60,018.00
Adjustment of book value of investment securities ..	869,253.05

Premium on capital stock issued	4,023,369.00
Premium on funded debt issued	80,251.25
Premium on stock reacquired and disposed of	98,113.67
Collection of old accounts previously written off...	1,077,318.22
Adjustment of book value of company's property..	9,793,082.68
Transfer of sinking fund reserves	1,261,925.00
Sundry other items	319,403.97

Total	189,617,546.60
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Debits:

Surplus applied to sinking and other reserve funds	674,435.64
Dividend appropriations of surplus	124,799,574.54
Capital stock issued as stock dividends	2,787,900.00
All other dividends	122,011,674.54

Stock discount extinguished through surplus....	3,817,410.00
Debt discount extinguished through surplus....	3,293,133.88
Miscellaneous appropriations of surplus.....	20,000.00
Loss on retired road and equipment.....	299,800.91
Estimated value of road abandoned	270,000.00
Other property retired....	29,800.91

6,477,797.29

Delayed income debits	16,444.73
Railway operating revenues	
Revenues from miscellaneous operations.....	93,625.07
Miscellaneous rent income	1,190.57
Miscellaneous nonoperating physical property.....	3,185.87
Separately operated properties—profit	131,789.35
Income from unfunded securities and accounts..	2,843.42
Railway operating expenses	1,722,123.36
Railway tax accruals.....	470,404.78
Expenses of miscellaneous operations	2,035,055.66
Rents for leased roads....	1,560,710.01
Miscellaneous rents	2,609.24
Miscellaneous tax accruals..	78,897.87

Separately operated prop- erties—loss	450.00
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[fol. 104]

Interest on funded debt...	310,364.55
Interest on unfunded debt	15,250.93
Income transferred to other companies	31,185.21
Miscellaneous income charges	1,666.67

Miscellaneous debits	31,709,798.96
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Adjustment and cancellation of balance sheet accounts	6,026,676.33
Loss from sale of investment securities	238,277.65
Loss from sale of miscel- laneous physical property	193,112.07
Excess of amount paid over par value of capital stock retired	105,833.37
Excess of amount paid over par value of funded debt retired	39,508.87
Adjustment of par of com- pany's securities reacquired	4,608.19
Adjustment of book value of investment securities..	1,425,467.15
Discount on stock reacquired and sold	8,494.09
Payment of old accounts previously charged off..	288.69
Adjustment of book value of company's property..	14,349,261.18
Depreciation written off...	8,384,239.12
Sundry other items.....	934,032.25

Credit balance on date of valuation.....	18,525,595.38
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Total	189,617,546.60
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It will be noted that the credit balance is \$35,985.73 in excess of the profit and loss balance in the carrier's return to us for year ending on date of valuation. This difference represents the net profit from the operations of the fire insurance fund to December 31, 1915, which was duly entered on the general books but not adjusted in the annual reports until December 31, 1918.

Investment in Road and Equipment

On date of valuation, the investment in road and equipment account of the carrier showed a balance of \$68,642,567.68, which had been established as follows:

Road acquired:

Money outlay, funded debt assumed, and book value of investment securities applied as the purchase price of the roadway property of predecessor companies	\$11,480,380.25
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Road constructed:

Money outlay	\$8,428,859.14	
Securities owned	318,000.00	
	<hr/>	
	8,746,859.14	
Less estimated value of road abandoned and written off to profit and loss	270,000.00	
	<hr/>	
		8,476,859.14

[fol. 105]

Additions and Betterments

Road:

Money outlay	10,713,581.92	
Money outlay purporting to be for additions and betterments, charged this account by crediting a corresponding amount to general balance sheet account "Additions to property through income and surplus"	6,839,487.37	
	<hr/>	
	17,553,069.29	
Less cash proceeds from sale of land	12,902.68	
	<hr/>	
		17,540,166.61

Equipment:

Money outlay	35,457,512.16	
Less retirements:		
Recorded value of equipment written off	\$5,251,843.36	
Cash proceeds from sale of equipment	106,166.12	
	<hr/>	
	5,358,009.48	
	<hr/>	
		30,099,502.68
		<hr/>
		67,596,908.68

Other items:

Debits	9,534,340.92	
Credits	8,488,681.92	
		<u>1,045,659.00</u>
Total		68,642,567.68

A description of the amounts in "Other items" follows:

Other Items

Debits:

Improvements on leased railway property	10,586,831.82	
Less amounts charged to profit and loss	1,129,208.63	
		<u>9,457,623.19</u>
Expenditures purporting to be for miscellaneous physical property as follows:		
Dam to facilitate the transportation of coal from the mines to Plant No. 1		8,001.17
Coal handling apparatus,—breakers, crackers, washers, screens, chutes and engines....		67,257.45
Boarding house at Olyphant, Penn.		1,459.11
		<u>9,534,340.92</u>
Total		

Credits:

Expenditures for right of way for the New York, charged to profit and loss	5,287.81	
Depreciation of equipment, charged to profit and loss	7,708,010.40	
Depreciation of equipment, charged to operating expenses	444,502.09	
Reduction in book value of equipment	40,200.00	
Depreciation on railroad buildings charged to operating expenses	4,173.26	
[fol. 106] Reduction of book value of road through profit and loss	285,058.36	
Donation from Center Village, N. Y., towards the cost of constructing a station at that point	1,450.00	
		<u>8,488,681.92</u>
Total		
Net debit		<u>1,045,659.00</u>

If certain adjustments were made in accordance with our present accounting rules, the balance in the investment in road and equip-

ment account would be decreased to \$67,596,908.68, made up of the following classes of expenditures:

	Recorded money outlay	Funded debt assumed	Securities owned, cancelled
Adirondack		\$1,000,000	.....
Duanesburgh		500,000	.....
New York			\$9,001,400
Cherry Valley			589,100
Greenwich & Johnson- ville Railway Com- pany (part of)	\$389,880.25	.....	.....
	389,880.25	1,500,000	9,590,500
The carrier	56,068,528.43	.....	318,000
	56,458,406.68	1,500,000	9,908,500
Total			

Less deductions not assignable specifically to any one or more of the above mentioned outlays: Estimated value of road abandoned and written off to profit and loss 270,000

The carrier charged to its investment in road and equipment account \$9,001,400 as the cost of acquiring the property of the New York. This amount consisted of \$9,000,000 par value of the common and preferred stock of that company, which the carrier had previously acquired for the consideration hereinafter mentioned, and was carrying at a book value of \$9,001,400:

Common Stock

Par value acquired	Recorded consideration	Recorded value of considera- tions given
\$17,700	Cash	\$16,790
3,247,700	Advances	2,872,700
497,400	Properties acquired and transferred	380,050
163,000	Securities of other companies	81,000
74,200	Character of considerations unknown	74,200

Preferred Stock

5,000,000	Advances	5,000,000
9,000,000	..... Total	8,424,740

[fol. 107] The carrier also charged to its investment in road and equipment account \$589,100 as the cost of acquiring the property of the Cherry Valley. This amount consisted of a like amount of that company's capital stock and funded debt, which the carrier had previously acquired for the following considerations:

Capital Stock

Par value acquired	Recorded consideration	Recorded value of considera- tions given
\$288,900	Securities of other companies.....	\$25,000.00
	Cash	5,000.00
200	Character of consideration unknown.....	200.00

Funded Debt

101,070	Cash	83,350.00
198,930	Securities of other companies.....	174,062.50
589,100	.....Total.....	287,612.50

Original Cost to Date

The original cost to date of the common-carrier property owned and used by the carrier can not be determined from the obtainable records. The carrier acquired 90,058 miles of road by construction, 10,200 miles by purchase, and approximately 242 miles by merger of the property of other companies. Of the latter, there are no accounting or other records of the costs of 151 miles of road originally built by the predecessor companies. For the remaining mileage, and for additions and betterments made by the carrier to the entire mileage, the data on the outlay for creating and improving the property, exclusive of equipment, are as follows:

Road:

Recorded money outlay.....	\$34,272,986.01
Investment securities.....	318,000.00
Less whatever of the above is represented by road abandoned and written off to profit and loss at an estimated cost of.....	270,000.00

Equipment:

Recorded money outlay.....	25,540,964.00
Verified cost of 20,279 units of equipment out of 20,295 units returned by the carrier.....	

The constituent parts of the gross outlays for road, listed according to the companies under which they were made, are as follows:

Carrier:

Recorded money outlay.....	\$26,191,951.20
Investment securities exchanged at book value....	318,000.00
Less road abandoned and written off to profit and loss at an estimated cost of.....	270,000.00

Equipment:

Recorded money outlay.....	25,540,964.00
Verified cost of 20,279 units of equipment out of 20,295 units returned by the carrier.....	

[fol. 108] Adirondack:

Recorded money outlay.....	215,787.08
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Duanesburgh:

Recorded money outlay.....	166,954.80
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New York:

Recorded money outlay.....	7,698,292.93
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In addition to the above, the published reports of certain regulation bodies of the state of New York show the following outlay for road constructed by predecessor companies, for which there are no accounting records:

Adirondack Company.....	\$2,619,412.53
Lake Ontario.....	3,420,899.35
The Schenectady & Susquehanna Rail Road Com- pany	600,000.00
Plattsburgh	441,129.56
Cherry Valley.....	589,100.00

The foregoing outlays may include the cost of lands classified as noncarrier and as partly carrier and partly noncarrier. They may also include an indeterminable amount representing that part of the cost of property abandoned, sold, or destroyed, in excess of the credits made to the account for salvage, proceeds from sale, and loss from such property.

Cost of Lands.—The carrier reports the original cost of all lands owned, including both carrier and noncarrier, as \$5,991,808.23. In verifying the carrier's returns, a net deduction of \$263,185.64 was made as not properly constituting land costs. The resulting balance of \$5,728,662.59, made up in part of costs supported by accounting records and in part of substantial deed considerations and other amounts, which the carrier claims to represent costs but which are not supported by accounting records, may be classified as follows:

Classification	Costs supported by accounting records	Amounts not supported by accounting records
Carrier lands:		
Owned and used:		
In New York.....	\$2,378,493.23	\$221,006.62
In Pennsylvania.....	668,098.91	17,110.63
In Vermont.....	4,057.80	2,110.00
Total	<u>3,050,649.94</u>	<u>240,227.25</u>
Owned but not used; leased to New York, Ontario and Western Railway Company:		
In New York.....	<u>11,700.00</u>	.....
Jointly owned and used with the Rensselaer:		
In New York.....	<u>1.75</u>	<u>16,000.00</u>
Rights in the public domain:		
Owned and used:		
In New York.....	<u>825.00</u>	<u>25.00</u>
[fol. 109] Rights in private lands:		
Owned and used:		
In New York.....	<u>3,100.00</u>	<u>1,100.00</u>
In Pennsylvania.....	<u>2,775.00</u>	.....
	<u>5,875.00</u>	<u>1,100.00</u>
Attendant costs not assignable as between the foregoing rights in public domain and rights in private lands:		
In New York.....	<u>11,567.25</u>	<u>1,825.00</u>
In Pennsylvania.....	<u>2,070.63</u>	.....
	<u>13,637.88</u>	<u>1,825.00</u>

Classification	Costs supported by accounting records	Amounts not supported by accounting records
Noncarrier lands owned:		
In New York.....	870,434.69	14,265.76
In Pennsylvania.....	33,050.15	1,000.00
In Michigan.....		900.00
In Illinois.....	1,273.99	3,700.00
In New Jersey.....	656,794.86	
Total	<u>1,561,553.69</u>	<u>19,865.76</u>
Lands classified as partly carrier and partly noncarrier:		
In New York.....	609,453.94	16,393.94
In Pennsylvania.....	179,488.44	
Total	<u>788,942.38</u>	<u>16,393.94</u>

Cost of Equipment.—The carrier reports 20,295 units of equipment, 452 units of roadway machines, and certain machinery as owned and used on date of valuation, and as costing \$32,152,926.26. A check of the carrier's return indicates that the following changes should be made:

Description	Units	Amount
Deductions:		
Steam locomotives:		
Excluded—not in serviceable condition.....	15	\$149,699.00
Freight-train cars:		
Excluded—not in serviceable condition.....	1	1,063.00
Shop machinery:		
Error in carrier's return.....	..	2,806.50
Total	<u>16</u>	<u>153,568.50</u>
Additions:		
Freight-train cars:		
Error in carrier's return.....	..	56,000.00
Total.....	..	<u>56,000.00</u>
Net total deductions.....	16	97,568.50

[fol. 110] After making the above adjustments the carrier's return is summarized as follows:

Classification	Units	Costs supported by account- ing records	Amounts not supported by account- ing records
Equipment:			
Steam locomotives.....	472	\$7,669,235.00	\$636,290.00
Freight-train cars.....	18,838	15,801,501.00	3,160,510.00
Passenger-train cars.....	462	1,581,530.00	847,316.00
Motor equipment of cars...	1	25,217.00	202.00
Work equipment.....	506	463,481.00	349,755.00
Total	20,279	25,540,964.00	4,994,073.00
Machinery:			
Roadway machines.....	452	6,904.00	43,478.00
Other expenditures—road..		8,828.21	1,689.31
Shop machinery.....		772,514.17	440,418.23
Power plant machinery...		178,186.84	68,302.00
Total	452	966,433.22	553,887.54

There is included in the above statement one unit of motor equipment of cars with \$25,217 in costs, as supported by accounting records, and \$202 of costs estimated by the carrier, which is included in the inventory as owned but not used for the reason that this unit is leased to and used exclusively by Carolina, Clinchfield and Ohio Railway.

Improvements on Leased Railway Property

The carrier has recorded expenditures aggregating \$19,506.01 for improvements to its leased railway property, covering money outlay on property of the Placid. In addition, its accounts record other amounts purporting to cover improvements on leased railway property which were charged as follows:

	Charged to—	
	Investment in road and equipment account	Profit and loss account
Albany.....	\$3,423,882.54	\$47,686.39
Rensselaer	1,894,170.21	1,078,658.30
Rome and Clinton Railroad Company, and The Utica, Clinton and Binghamton Railroad Company..		100,970.87
Northern	3,898,388.35	
Union Railroad Extension.....	241,182.09	2,863.94
Total.....	9,457,623.19	1,230,179.50

[fol. 111] The amount charged to improvements on the railroad of the Northern is the exact amount shown on the general balance sheet of the latter, on date of valuation, as representing its investment in road and equipment. The amount expended on the Union Railroad Extension was made during the time this extension was a part of the property of the Baltimore Coal and Union Railroad Company, which subsequently was merged with the Northern.

Miscellaneous Physical Property

The balance in the miscellaneous physical property account of the carrier on date of valuation was \$10,280,864.44, the greater part of which is representative of its coal mining activities as indicated in the following summarization:

Coal mining department.....		\$8,339,609.12
Coal lands and real estate.....	\$6,645,026.39	
Other	1,694,582.73	
		<hr/>
Other miscellaneous physical property.....		1,941,255.32
		<hr/>
Ore lands	58,238.89	
Real estate at Weehawken, N. J.	1,605,270.50	
Buffalo, N. Y.	240,629.59	
Utica, N. Y.	28,612.60	
Chicago, Ill.	4,973.99	
Battle Creek, Mich.	900.00	
Other	2,629.75	
		<hr/>
Total.....		10,280,864.44

We have classified certain lands reported by the carrier as used for noncarrier and for partly carrier and partly noncarrier purposes, and it is not known to what extent the above charges apply to these lands.

Investments in Other Companies

The carrier's recorded investments in the securities of other companies on date of valuation are as follows:

	Affiliated companies	Other companies	Total
Stocks	\$23,504,733.57	\$1,414,410.30	\$24,919,143.87
Bonds	920,900.00	4,213,455.11	5,134,355.11
Miscellaneous		716.08	716.08
Advances	19,374,444.50	73,052.78	19,447,497.28
		<hr/>	<hr/>
Total ..	42,800,078.07	5,701,634.27	49,501,712.34

Stocks Unpledged, Affiliated Companies, Carrier

	Par value	Book value
Placid—preferred	\$3,000,000	\$3,000,000.00
Placid—common	75,000	1.00
Northern	1,500,000	1,500,000.00
Cooperstown of 1891	45,000	1.00
Susquehanna	268,300	9,948.50
[fol. 112] Greenwich & Johnsonville Railway Company	225,000	225,000.00
Napierville Junction Railway Com- pany	600,000	566,700.39
The Quebec, Montreal and Southern Railway Company	1,000,000	1.00
Schoharie Valley Railway Company	100,000	75,000.00
Wilkes-Barre Connecting Railroad Company	91,300	91,300.00
Plattsburgh Traction Company	100,000	27,460.16
Schenectady Railway Company ...	2,050,000	2,050,000.00
Troy and New England Railway Company	179,980	44,717.52
United Traction Company	12,499,600	12,499,600.00
Total	<u>21,734,180</u>	<u>20,089,729.57</u>

Affiliated Companies, Noncarrier

The Chateaugay Ore and Iron Com- pany—1st preferred	360,800	1.00
The Chateaugay Ore and Iron Com- pany—2nd preferred	319,850	1.00
The Chateaugay Ore and Iron Com- pany—common	1,250,000	1.00
The Hudson Coal Company	3,500,000	3,400,001.00
Kingston Realty Company	5,000	5,000.00
The Northern New York Develop- ment Company	10,000	10,000.00
Total	<u>5,445,650</u>	<u>3,415,001.00</u>

Nonaffiliated Companies, Carrier

	Par value	Book value
Albany	450,000	450,000.00
Rensselaer	800,000	800,000.00
Ticonderoga	3,400	3,864.02
The Champlain Transportation Company	52,050	83,911.11
The New Jersey and New York Rail- road Company	10,800	1.00
Rome and Clinton Railroad Com- pany	14,100	21,162.50
Total	<u>1,330,350</u>	<u>1,358,938.63</u>

Nonaffiliated companies, Noncarrier

Scranton Textile Company	150.00	1.00
United States Hotel Company	27,703.00	1.00
The Bluff Point Land Improvement Company	222,300.00	55,466.67
Scranton Pump Company	91.20	1.00
Laurel Run Turnpike Company	1,500.00	1.00
Bangor Union Slate Company	7,100.00	1.00
Total	<u>258,844.20</u>	<u>55,471.67</u>
Grand total	<u>28,769,024.20</u>	<u>24,919,143.87</u>

Bonds Unpledged, Affiliated Companies, Carrier

Glens Falls, Sandy Hill & Fort Ed- ward Rail Road Company	100,000	100,000
Glens Falls, Sandy Hill & Fort Ed- ward Rail Road Company	50,000	50,000
Plattsburgh Traction Company	24,000	24,000
Stillwater & Mechanicsville Street Railway Company	202,500	202,500
[fol. 113] Stillwater & Mechanics- ville Street Railway Company	47,500	47,500
Troy and New England Railway Company	160,000	160,000
Total	<u>584,000</u>	<u>584,000</u>

Affiliated Companies, Noncarrier

The Chateaugay Ore and Iron Com- pany	<u>336,900</u>	<u>336,900</u>
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Nonaffiliated Companies, Carrier

	Par value	Book value
Albany	3,556,000	3,455,000.00*
The Champlain Transportation Company	250,000	130,833.33
The Lake George Steamboat Com- pany	20,000	20,000.00
Total	<u>3,826,000</u>	<u>3,605,833.33</u>

Nonaffiliated Companies, Noncarrier

The Fort William Henry Hotel Company	45,000	40,000.00
The Fort William Henry Hotel Company	272,000	272,000.00
The Bluff Point Land Improvement Company	28,000	27,346.78
The Bluff Point Land Improvement Company	250,000	250,000.00
Carbondale Gas Company	8,000	8,000.00
City of New York, corporate stock ..	10,000	10,275.00
Total	<u>613,000</u>	<u>607,621.78</u>
Grand total	<u>5,359,900</u>	<u>5,134,355.11</u>

Miscellaneous

Bonds and mortgages on real estate	716.08	716.08
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Advances, Affiliated Companies, Carrier

Northern	856,712.42
Cooperstown of 1891	41,357.01
The Quebec, Montreal and Southern Railway Com- pany	6,464,030.48
Greenwich & Johnsonville Railway Company	117,360.23
Sapierville Junction Railway Company	6,200.00
Schoharie Valley Railway Company	13,975.17
United Traction Company	792,277.03
Troy and New England Railway Company	50,331.54
Plattsburgh Traction Company	44,222.79
Hudson Valley Railway Company	1,672,822.84
Wilkes-Barre Connecting Railroad Company	1,134,828.55
Total	<u>11,194,118.06</u>

*\$3,000,000 pledged.

[fol. 114]

Affiliated Companies, Noncarrier

	Par value	Book value
The Chateaugay Ore and Iron Company.....		1,848,500.00
The Northern New York Development Company....		644,565.91
Shanferoke Coal Company.....		3,328,738.28
Schuykill Coal and Iron Company.....		2,358,522.25
Total		<u>8,180,326.44</u>

Nonaffiliated Companies, Carrier

Ticonderoga	49,057.35
The Troy Union Rail Road Company.....	23,995.43
Total	<u>73,052.78</u>
Grand total.....	<u>19,447,497.28</u>
Total investment in other companies.....	49,501,712.31

Leased Railway Property

The following statement gives the details of property leased from and to other companies, together with the terms of the use and the amount of rental accrued for year ending on date of valuation:

Description and Terms of Lease		Rental accrued
Property of others—leased to the carrier	Mileage	
Albany:		
Albany to Binghamton, N. Y.....	142.441	
Leased in perpetuity from February 24, 1870.		
Annual rental, 9 per cent on capital stock, interest on funded debt, and \$1,000 for organization expenses....		\$786,750

Property of others—leased to the carrier	Mileage	Rental accrued
Rensselaer:		
Waterford Junction to Ballston Spa, N. Y.....	19.950	
Green Island to Waterford Junction, N. Y.....	5.600	
Watervliet to Troy, N. Y.....	1.080	
Saratoga Springs to Lake Station, N. Y.	40.950	
Fort Edward to Lake George, N. Y....	14.460	
Whitehall to State Line, N. Y.....	6.590	
Eagle Bridge to State Line, N. Y.....	32.400	
State Line to Castleton, Vt.....	22.744	
Castleton to Rutland, Vt.....	10.330	
Total	153.704	
Leased in perpetuity from May 1, 1871.		
Annual rental, 8 per cent on capital stock, interest on funded debt, and \$1,000 for organization expenses....	....	941,000
Vermont:		
Albany to Waterford Junction, N. Y....	12.273	
Leased in perpetuity from June 12, 1860, to the Rensselaer and assigned to the carrier June 15, 1871.		
Annual rental \$20,000.....	....	20,000
[fol. 115] Saratoga:		
Schenectady to Saratoga Springs, N. Y.	20.806	
Leased in perpetuity from February 1, 1851, to the Rensselaer, in perpetuity from July 1, 1860, to the same company, and assigned to the carrier June 15, 1871.		
Annual rental, \$31,750.....	....	31,750
Rutland:		
New York-Vermont state line to Castleton, Vt.....	6.833	
Leased in perpetuity from February 1, 1870, to the Rensselaer and assigned to the carrier June 15, 1871.		
Annual rental, 6 per cent on capital stock, and \$150 for organization expenses .....	....	15,492

Property of others—leased to the carrier	Mileage	Rental accrued
Northern:		
Green Ridge to Wilkes-Barre, and branch lines in Pennsylvania	29.284	
Leased in perpetuity from December 1, 1873.		
Annual rental, interest on funded debt, and retires the same at maturity; maintains and operates the property, pays all taxes and includes the results of operations in its own account.		
Rent for year ended on date of valuation not stated.		
Ticonderoga:		
Ticonderoga to Ticonderoga Junction, N. Y.	0.587	
Leased to the carrier from date opened for operation for term of corporate existence under agreement dated August 13, 1890.		
The carrier maintains, manages and operates the property and is permitted to retain 25 per cent of the gross earnings; pay all taxes, interest on funded debt, appropriations not to exceed \$1,000 per annum to establish a sinking fund to retire the funded debt, etc., and dividends on the stock not to exceed 5 per cent. . . . .	....	4,849.31
Placid:		
Lake Placid to Dannemora, N. Y.	63.485	
Leased for 500 years from January 1, 1903.		
Annual rental, 4 per cent on preferred stock, interest on funded debt . . . . .	....	126,741.13
Dannemora:		
Dannemora to Bluff Point, N. Y.	16.336	
Leased for 100 years from July 1, 1879, to the Chateaugay, and assigned to the carrier on January 1, 1903.		
Annual rental, free transportation of officers and supplies for the state prison at Dannemora, and the payment of \$1 yearly.		

[fol. 116] Property of others leased to the carrier and subleased to others:

Property of others—leased to the carrier	Mileage	Rental accrued
Rome and Clinton Railroad Company:		
Clinton to Rome, N. Y.....	12.834	
The Utica, Clinton and Binghamton Railroad Company:		
Randallsville to Utica, N. Y.....	31.269	
The properties of Rome and Clinton Railroad Company and The Utica, Clinton and Binghamton Railroad Company are leased in perpetuity from May 26, 1886.		
Annual rental, \$83,875.		
Subleased to New York, Ontario and Western Railway Company for 35 years from June 1, 1886, at an annual rental of \$75,000 to April 30, 1908; thereafter 20 per cent of the gross earnings.		
Payable		83,875.00
Receivable		64,721.97

The accounting reports of these two lessor companies have been made a part of the report on New York, Ontario and Western Railway Company.

Trackage Rights

In addition to the property leased or operated as agent, the carrier is granted the use of the property of other companies, and grants the use of its property to other companies, as follows:

Name of grantor	Between—	State	Miles
Boston and Maine Railroad.....	Troy and Eagle Bridge.	N. Y..	22.04
	Mechanicville and Eagle Bridge	N. Y..	19.43
	Crescent and Coons....	N. Y..	6.80
	Coons and West End		
The Central Railroad Company of New Jersey.....	Mechanicville	N. Y..	1.90
	Hudson and Union Junction	Penn.	1.34
Erie Railroad Company.....	Carbondale and Jefferson Junction.....	Penn.	35.01
	Binghamton and Owego	N. Y..	22.00
Lehigh Valley Railroad Company....	South Wilkes-Barre and Wilkes-Barre	Penn.	1.62
The Troy Union Rail Road Company.	In the city of Troy.....	N. Y..	2.03
Wilkes-Barre Connecting Railroad	Buttonwood and Hudson	Penn.	5.04
Total			117.21

Name of grantee	Between	State	Miles
Boston and Maine Railroad.....	Albany and Troy.....	N. Y..	8.00
	Mechanicville and West End	N. Y..	0.98
	Crescent and Coons.....	N. Y..	6.80
The Central Railroad Company of New Jersey	Plymouth Junction and South Wilkes-Barre..	Penn.	1.62
[fol. 117] Clarendon & Pittsford Rail- road Company.....	At West Rutland.....	Vt....	2.67
The Delaware, Lackawanna & West- ern Railroad Company.....	Vine Street, Scranton and Marvin Colliery..	Penn.	1.63
Erie Railroad Company.....	Avoca and Carbondale..	Penn.	24.08
The Grand Trunk Railway Company of Canada.....	Moers Junction and New York-Canada line.	N. Y..	2.60
Lehigh Coal and Navigation Company (The)—The Central Railroad Com- pany of New Jersey, lessee.....	Hudson and Union Junc- tion	Penn.	1.34
	Union Junction and Mi- nooka Junction.....	Penn.	9.61
	Avoca and Moosic.....	Penn.	2.30
Lehigh Valley Railroad Company....			
Napierville Junction Railway Com- pany	Rouses Point and New York-Canada line....	N. Y..	1.10
The New York Central Railroad Com- pany	Kenwood Junction and Colonie	N. Y..	6.00
	Lake Placid and Sara- nac Lake.....	N. Y..	10.08
Wilkes-Barre Connecting Railroad Company	Buttonwood and connec- tion with Plymouth Branch	Penn.	1.57
Total			80.38

[fol. 118]

[File endorsement omitted]

EXHIBIT B TO PETITION—Filed June 13, 1923

Part 2 of 2 Parts

Predecessors of the Carrier

The Adirondack Railway Company

(The Adirondack)

Introductory

At its demise the Adirondack owned and operated a single track, standard gauge railroad extending from a connection with the railroad of the carrier at Saratoga Springs, in a northerly direction to North Creek, N. Y., about 57.307 miles.

Corporate History

The Adirondack was incorporated July 7, 1882, under the general laws of New York, and is a reorganization of the Adirondack Company. The property of the latter was sold under foreclosure proceedings and conveyed to William W. Durant, William Sutphen and others on October 21, 1881, and conveyed by them to the Adirondack on November 24, 1882. On November 5, 1902, the property of the Adirondack was merged with that of the carrier.

Development of Fixed Physical Property

The property acquired by the Adirondack consisted of the lands that had been acquired by the Adirondack Company from the state of New York, and a railroad that was constructed during the years 1865 to 1871. The Adirondack was relieved from an obligation to construct its railroad beyond North Creek, by a certificate of the Board of Railroad Commissioners of New York dated May 9, 1882.

History of Corporate Financing

The capital stock and the several classes of long-term debt issued and retired are here stated, with the amount of each outstanding on November 5, 1902, the date of demise:

Description	Originally issued	Retirements	Outstanding
Capital stock	\$2,600,000.00	.....	\$2,600,000
Funded debt	2,561,637.75	\$1,561,637.75	1,000,000
Total	5,161,637.75	1,561,637.75	3,600,000

Capital Stock.—The authorized capital stock was \$4,000,000, divided into shares of \$100 each. Of this amount \$2,600,000 was issued at par to the bondholders and stockholders of the Adirondack Company in the acquisition of the property of that company, in accordance with the agreement of reorganization dated April 30, 1880.

Funded Debt.—The Adirondack assumed two issues of funded debt, both of which were retired, and issued one series of funded debt that was outstanding on the date of demise.

[fol. 119] Prior mortgage account, assumed and retired, \$75,000. The details of this issue were not obtainable. It was assumed by the Adirondack as a part consideration for the property of the Adirondack Company, and was apparently a first lien given to the trustees for the bondholders and creditors of the Adirondack Company. It was retired January 7, 1889, by the exchange of the same amount of cash.

Trustees' certificates, 30-year 6 per cent, dated April 30, 1880, assumed and retired, \$1,486,637.75. These certificates were authorized not to exceed \$1,500,000 under the reorganization agreement of the stockholders, bondholders and creditors of the Adirondack Company, dated April 30, 1880. Under the plan proposed by the agreement,

the trustees were authorized to issue their certificates to the stockholders, bondholders and creditors of the Adirondack Company upon the surrender of their stock, bonds and claims in the following manner:

The trustees agreed to issue their certificates to the bondholders of the Adirondack Company in the proportion of \$100 of certificates for each \$200 of the bonds surrendered. Of the certificates so issued, 50 per cent were redeemable in second-mortgage bonds, and 50 per cent in capital stock of the Adirondack at par.

The trustees agreed to issue their certificates to the stockholders of the Adirondack Company in the proportion of \$100 of certificates for each \$1,000 of the stock surrendered. Such certificates were redeemable in the capital stock of the Adirondack at par.

The trustees agreed to issue their certificates to the creditors of the Adirondack Company in the proportion of \$100 of certificates for each \$200 of claims surrendered. Of the certificates so issued, 50 per cent were redeemable in second-mortgage bonds, and 50 per cent in capital stock of the Adirondack at par.

A total of \$1,486,637.75 of certificates were issued in the manner indicated, the liability for which was assumed by the Adirondack as part cost of acquiring the property of the Adirondack Company. Of this amount a par value of \$1,479,033.08 was retired during the years 1889 to 1896 with \$739,516.49 cash advanced by the carrier. The profit of \$739,516.59 accruing to the Adirondack in this connection was credited to the latter's profit and loss account. At June 30, 1902, the balance of \$7,604.67 outstanding in this account was cancelled by a further credit of a like amount to profit and loss.

First-mortgage, 4½ per cent 50-year gold bonds, dated March 1, 1892, issued and outstanding, \$1,000,000. A total amount of \$2,000,000 was authorized for the purpose of retiring the trust certificates and other obligations of the Adirondack. Under authority of the stockholders, \$1,000,000 of these bonds were delivered to the carrier and sold by them for \$987,500 cash. The latter was reimbursed from these proceeds for the \$739,516.59 previously advanced to retire trustees' certificates and the balance turned over to the Adirondack. The latter charged its profit and loss account with the \$12,500 of discount incurred in the sale of its bonds. In addition to the discount mentioned above, there were other expenses amounting to \$1,050 for engraving bonds which was charged to income.

[fol. 120] Notes Payable.—In addition to the foregoing securities, the Adirondack issued short-term notes for temporary financing to the amount of \$301,214.66, of which \$127,437.19 were renewals of due notes. The considerations received for the balance were \$123,077.47 cash and \$50,000 for construction or property. The total amount of \$301,214.66 outstanding was subsequently retired with a like amount of cash.

Result of Corporate Operation

Income Account.—The income account of the Adirondack for the period November 24, 1882, to June 30, 1902, is stated as follows:

Operating income:

Railway operating revenues	\$3,200,252.78
Railway operating expenses	2,377,967.19

Net revenue from railway operations	822,285.59
Railway tax accruals	115,775.55

Railway operating income	706,510.04
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Nonoperating income:

Hire of equipment	\$4,783.75
Miscellaneous rent income	3,234.73
Income from unfunded securities and accounts	39,500.97
Miscellaneous income	5,519.34

Total	53,038.79
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Gross income	759,548.83
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Deductions from gross income:

Interest on funded debt	493,063.86
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Income balance transferred to credit of profit and loss	266,484.97
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Profit and Loss Account.—The profit and loss account of the Adirondack follows:

Credits:

Net income transferred from income account	\$266,484.97
Miscellaneous credits	776,954.74

Balance transferred from trustees	\$5,956.87
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Cancellation of balance sheet ac- counts	23,876.61
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Excess of par over amount paid in the retirement of trust cer- tificates	739,516.59
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Trustees' certificates written off ..	7,604.67
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Debit balance at June 30, 1902	439,425.11
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Total	1,482,864.82
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Debits:

Miscellaneous debits		1,482,864.82
Uncollectible accounts	160.98	
Cancellation of balance sheet ac- counts	19,020.66	
Expenditures for rails	14,614.30	
Debt discount extinguished through surplus	12,500.00	

[fol. 121]

Investments in securities written off	4,200.00	
Depreciation on equipment....	92,372.42	
Depreciation on shops and sup- plies	1,601.26	
Excess of equity in lands over cash proceeds from the sale of such lands	1,338,395.20	
Total		1,482,864.82

Investment in Road and Equipment

On date of demise, the investment in road and equipment account of the Adirondack carried a balance of \$2,835,199.61, which had been established as follows:

Road Acquired

Adirondack Company:

Capital stock issued		\$2,600,000.00
Funded debt assumed		1,561,637.75
Trustees' certificates	\$1,486,637.75	
Prior mortgage account	75,000.00	
Total		4,161,637.75

Additions and Betterments

Money outlay		223,006.47
Total		4,384,644.22

Less:

Proceeds from sales of land.....	145,250.00	
Proceeds from sales of old rails....	7,219.39	
Excess of equity in so-called "wild lands" over proceeds from sales written off to profit and loss....	1,338,395.20	
Value ascribed to equipment ac- quired with the property of the Adirondack Company and trans- ferred to the Rensselaer upon merger of the Adirondack with the carrier	58,580.02	1,549,444.61

Net investment in road and equipment ac- count.....	2,835,199.61
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This balance would comprise the following classes of elements:

Money outlay	\$223,006.47
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Outlay in securities:

Capital stock issued, par value.....	2,600,000.00
Funded debt assumed, par value.....	1,561,637.77

Less:

Cash proceeds from sales of land and materials....	152,469.39
Deductions not assignable specifically to any one or more of the classes of outlay stated above.....	1,396,975.22

[fol. 122]

Original Cost to Date

The original cost to date of demise of the common-carrier property owned by the Adirondack can not be ascertained owing to the absence of the accounting records of its predecessors and those of the contractors who constructed the original road. The Adirondack constructed no road but made certain additions and betterments to the property acquired from its predecessors.

Certain published reports of the state of New York, hereinafter referred to, show that the earliest predecessor, the Lake Ontario, had an investment in road and equipment of \$3,675,858.67, which included \$76,639.32 of discount on sale of bonds. The balance of \$3,599,219.35 was divided \$3,420,899.35 to road and \$178,320 to equipment. The records indicate that only a part of the grading for the road as projected had been completed prior to the demise of the company.

A successor company, the Adirondack Estate, in the published reports referred to, had an investment in road and equipment of \$283,593.62, but it could not be determined whether this was addi-

tional to the reported expenditure of the predecessor company or not. This company did some additional grading but added nothing to the physical property obtained from its predecessor.

The next succeeding corporation, the Adirondack Company, constructed the 57.307 miles of road that was eventually merged with the carrier, at a cost, as shown in the published reports, of \$2,728,692.55. It could not be determined if this amount included any portion of the expenditures reported for the two predecessor companies.

The Adirondack made certain additions and betterments to the completed road amounting to \$215,787.08, which have been classified as follows:

Engineering	\$6,630.76
Land and land damages	23,177.17
Grading	58,054.34
Bridges, trestles and culverts	61,240.71
Ties	3,348.30
Rails	24,209.35
Other track material	10,248.92
Fencing right of way	243.74
Station buildings and fixtures	1,301.85
Shops, engine houses and turntables	27,712.65
Water and fuel stations	3,615.20
Not classified	3,223.48
Total	223,006.47
Less proceeds from the sale of old rails	7,219.39
Net additions and betterments	215,787.08

In addition to the above, the accounting records show an expenditure of \$14,614.30 for rails that was charged to profit and loss. It could not be determined whether this was additional to the above outlay or represented renewals.

The Adirondack acquired with the property of the Adirondack Company many acres of so-called "wild lands" in Essex, Franklin, [fol. 123] Herkimer, Hamilton and Warren counties, which it originally included in its investment in road and equipment. These lands were disposed of in 1887 and 1889 for \$145,250 cash, and the balance of \$1,338,395.20 was written off to profit and loss account.

Adirondack Company

Predecessor of the Adirondack

Introductory

There are no obtainable records of the Adirondack Company and the information here submitted has been taken from the laws of

New York, the sworn reports rendered by it and published in the "State Engineers' Reports on Railroads," the accounting records of its successor company, the Adirondack, and from the returns on corporate history made by the carrier.

The property of the Adirondack Company was operated from completion to December 15, 1874, by its own organization and by several receivers; from December 15, 1874, to October 21, 1881, by Thomas C. Durant, receiver; and from October 21, 1881, to November 24, 1882, by Thomas C. Durant, as agent. The details of these operations are not of record.

The Adirondack Company passed through many financial troubles, resulting in the placing of its affairs in the hands of receivers; and, under judgment of foreclosure against it dated June 28, 1881, foreclosing the mortgage of July 1, 1872, given to the New York State Loan and Trust Company, the franchise and property were sold to William Sutphen and W. W. Durant. The property was conveyed to them by a deed dated October 21, 1881, who in turn conveyed it to the Adirondack by a deed dated November 24, 1882.

Corporate History

The Adirondack Company was a New York corporation organized by the purchasers of the property and franchises of the Adirondack Estate, and was incorporated October 24, 1863, under the general laws of New York and under various special acts augmenting its rights and privileges. The articles of association were filed October 24, 1863, and were amended March 1, 1871. Under the articles of association and amendments, the corporation was to continue for 1,000 years, and had for its purposes the acquisition of the property of the Adirondack Estate, the completion, operation, maintenance and extension of the railroad projected by that company, and to develop its lands and market their native products.

Development of Fixed Physical Property

The line of road projected by the company was to extend from Ogdensburg, on the St. Lawrence River, to Saratoga Springs, N. Y., and from a connection with this line to Ausable Forks, N. Y., a total distance of about 185 miles.

[fol. 124] At November 11, 1863, the Adirondack Company acquired all of the property of the Adirondack Estate, consisting of a right of way on which some grading had been done and about 525,000 acres of land. At its demise on November 24, 1882, it owned a standard gauge, single track railroad extending from Saratoga Springs to North Creek, N. Y., about 57.307 miles, which had been constructed as follows:

Termini	Date opened	Miles
Saratoga Springs to Greenfield	1865	5.680
Greenfield to Wolf Creek	1866	18.756
Wolf Creek to Thurman	1869	10.556
Thurman to near Riverside	1870	14.556
Near Riverside to North Creek	1871	7.759
Total		57.307

History of Corporate Financing

The obtainable records indicate that the Adirondack Company was authorized to issue \$5,000,000 of capital stock, which was subsequently increased to \$10,000,000 by special act of March 31, 1865. This stock was divided into shares of \$100 each. It is not of record what part of the authorized stock was issued and retired and the amount outstanding on November 24, 1882.

There was also authorized funded debt amounting to \$6,000,000, covered by a mortgage on the entire property given to The New York State Loan and Trust Company. This amount consisted of Adirondack Company gold bonds dated July 1, 1872, and payable July 1, 1902, with interest at 7 per cent. The purpose of this issue was to secure funds for completing the road. It is not of record what amount of these bonds were issued, retired and outstanding on November 24, 1882.

The records of its successor company, the Adirondack, state that there was authorized \$1,500,000 of trustees certificates, of which there was issued for unknown considerations \$1,486,637.75 that were subsequently assumed by the Adirondack. The same records also show \$75,000 of "prior mortgages" which were assumed by the Adirondack.

Aids, Gifts, Grants, and Donations

The Adirondack Company was authorized by various special acts "to purchase, take and hold lands to the amount of 1,000,000 acres," all of which was exempt from taxation until September 12, 1883, provided the company completed and placed in operation 25 miles of its road by December 1, 1864, 35 additional miles of its road by December 1, 1866, and 25 additional miles of its road by December 1, 1868. In the event these sections were not completed, the state of New York by special act of April 27, 1863, required the Adirondack Company to deposit with the comptroller of the state \$20,000 in New York or United States bonds to be held as security for the payment of taxes on the lands from 1863 to 1868, inclusive. It is not of record how many acres of land of the so-called wilderness was acquired.

[fol. 125]

Original Cost to Date

The original cost to date of the common-carrier property owned and used by the Adirondack Company on November 24, 1882, cannot be ascertained owing to the absence of accounting records.

The only obtainable information pertaining to the cost of the road and equipment of the Adirondack Company at November 24, 1882, is that contained in the State Engineers' Reports on Railroads for the year September 30, 1874. These reports show the cost of completed road and equipment (60 miles) as \$2,728,692.55, and classify this amount as follows:

Graduation and masonry	\$1,603,629.22
Bridges	100,751.50
Superstructures, including iron	659,233.58
Passenger and freight stations, buildings and fixtures	18,597.20
Engine and car houses, machine shops, machinery and fixtures	2,930.06
Land, land damages and fences	111,995.10
Locomotives, fixtures and snow plows	45,923.03
Passenger and baggage cars	17,581.09
Freight and other cars	45,775.90
Engineering and agencies	122,275.87
Total	<hr/> 2,728,692.55

This record contains a further statement that additional expenditures of \$384,822.19 were incurred in advance of the completed portion of the road for engineering, land, and land damages, graduation and masonry.

Miscellaneous Physical Property

The Adirondack Company had investments in miscellaneous physical property consisting of lands acquired from the Adirondac Estate, and those it had subsequently acquired on its account. Of the first group, the records state that there were 525,000 acres. The state of New York by special act granted the company the right to acquire 1,000,000 additional acres, but the records do not state what quantity of lands the company held at its demise.

The Adirondac Estate and Railroad Company

(The Adirondac Estate)

Predecessor of the Adirondack Company

Introductory

There are no accounting or other records of the Adirondac Estate and the information here submitted was taken partly from the laws of New York pertaining to the company, partly from the corporate history of the carrier and partly from the State Engineers' Reports on Railroads.

[fol. 126]

Corporate History

The Adirondac Estate was a New York corporation organized by the bondholders of the Lake Ontario to take over the property

formerly owned by that company. It was incorporated under the general laws of New York, and under special acts of February 18, 1860, March 13, 1861, and March 29, 1862. Its articles of association were filed August 11, 1860. The special acts referred to and its articles of incorporation gave it the additional rights "to convert and prepare for market, the native products of the forest, and to mine and prepare for market the iron ores upon the lands owned by them, and to transport, sell and dispose of the same"; also to construct a railroad from Ogdensburg, N. Y., on the St. Lawrence River, to a connection with its road in Essex county, and other branch lines, making in all about 300 miles of railroad.

Although incorporated February 18, 1860, the Adirondac Estate did not come into possession of the property of its predecessor, the Lake Ontario, until August 13, 1860, when it acquired an undivided three-fifths interest, and on September 26, 1860, when it acquired the remaining two-fifths interest.

The Adirondac Estate retained possession of its property until June 9, 1862, when it passed into possession of a receiver due to inability to meet its obligations. The property was held by several receivers, and was finally sold by order of the court and conveyed to Albert N. Cheney on December 16, 1862. Cheney reconveyed the property by deeds dated December 26, 1862, and November 11, 1863, to purchasers who incorporated it as the Adirondack Company.

Development of Fixed Physical Property

During the life of the Adirondac Estate no construction was undertaken except some grading, nothing being added to the Physical property of its predecessor, so that there was conveyed to its successor the identical property that it had acquired.

At November 11, 1863, the railroad property of the Adirondac Estate consisted of that which it had acquired from the Lake Ontario and the additional rights given to it by its articles of incorporation to construct a railroad from Ogdensburg, to a connection with its line in Essex county, N. Y., and other branch lines. In addition to the railroad property, however, it has acquired the residue of lands in Warren, Hamilton, Herkimer, Franklin, Essex and Lewis counties, a portion of which the Lake Ontario had previously acquired through preemption rights granted to it by the state of New York.

History of Corporate Financing

The articles of association authorized the Adirondac Estate to issue capital stock not to exceed \$15,000,000, divided into shares of \$100 each. The obtainable records do not disclose the amount of capital stock issued or the amount outstanding on date of demise. No mention is made of the capital stock and funded debt of the predecessor company, the Lake Ontario, nor to the issue, assumption or retirement of any funded debt by the Adirondac Estate.

[fol. 127] Judgments were secured against the Adirondac Estate by Albert N. Cheney for \$90,579.94, and by Hezron A. Johnson for

\$10,656.80, in February, 1862, for moneys advanced. The failure to pay these obligations and the court costs resulted in the appointment of the receiver.

Aids, Gifts, Grants, and Donations

The obtainable records state that the Lake Ontario was granted preemption rights of selecting and purchasing 250,000 acres of land from the state of New York at 5 cents per acre. The residue of these lands was acquired by the Adirondac Estate, and by the terms of the act the lands were exempt from taxes until September 12, 1879. This matter is more fully discussed in the report of the Lake Ontario.

Result of Corporate Operations

The Adirondac Estate did not complete its projected railroad prior to date of demise, which precludes a statement of its income and profit and loss accounts.

Investment in Road and Equipment

The obtainable records do not show the investment in road and equipment.

Original Cost to Date

The original cost to date of the common-carrier property owned by the Adirondac Estate on date of demise cannot be ascertained owing to the absence of accounting records. The last published report of the Adirondac Estate, for September 30, 1861, states that the cost of road and equipment was \$283,593.62, consisting of:

Land, land damages and fences	\$270,000.00
Engineering and agencies	13,593.62
Total	<hr/> 283,593.62

A report to the State Engineer of New York, made by its predecessor, the Lake Ontario, for the year 1858, shows an investment in road, exclusive of discount on bonds issued, of \$3,420,899.35. It could not be determined whether this amount includes the \$283,593.62 above referred to, or whether the latter amount is additional thereto.

Miscellaneous Physical Property

At its demise the Adirondac Estate owned the lands it had acquired under preemption rights, but the records list no investment in miscellaneous physical property.

[fol. 128] The Lake Ontario and Hudson River Railroad Company

(The Lake Ontario)

Predecessor of the Adirondac Estate

Introductory

There are no obtainable records of the Lake Ontario and the information here submitted was taken from the laws of New York, the State Engineers' Reports on Railroads, and from the returns of the carrier on corporate history.

Corporate History

The Lake Ontario was a New York corporation, incorporated as Sackets Harbor and Saratoga Railroad Company, under a special act of New York, April 10, 1848, for the purpose of constructing, operating and maintaining a railroad from Sackets Harbor, on Lake Ontario, to a connection with the Saratoga "in the town of Milton, or in the town of Saratoga Springs, N. Y." a distance of about 182 miles. The original act of incorporation was amended by a special act of March 29, 1851, extending to the company the provisions of the General Railroad Law of 1850, and was further augmented by special act of April 15, 1853. The name was changed to that first mentioned by a special act dated April 6, 1857, and the line originally projected was extended from its southern terminus "to tide-water at, in or near Troy or Albany, N. Y."

The Lake Ontario defaulted in its interest obligations, and on February 23, 1860, its property and franchises were sold under foreclosure proceedings to Alrick Hubbell, et al., who in turn re-conveyed the property and franchises to the Adirondac Estate.

Development of Fixed Physical Property

At its demise, the property of the Lake Ontario consisted of a projected railroad from Sackets Harbor, to Albany, or Troy, N. Y., a distance of about 182 miles. The obtainable records indicate that construction of the road was begun in 1852, but that only part of the grading had been done prior to the sale of the property.

History of Corporate Financing

Capital Stock.—The articles of association authorized the issue of capital stock of \$2,500,000, divided into shares of \$100 each, but this amount was subsequently increased to \$6,000,000. There are no records to show the amount of capital stock issued and outstanding on date of demise. The last report of the Lake Ontario, published in the State Engineers' Report on Railroads for the year 1858, states that the amount of capital stock subscribed was \$5,461,100, of which there had been paid in cash \$555,186.

Funded Debt.—The funded debt of the Lake Ontario was \$4,000,000, consisting of 7 per cent bonds issued September 12, 1854, payable August 1, 1879. These bonds were secured, not only by the property of the company used for its purposes as a common carrier, [fol. 129] but also by lands which had been acquired from the state of New York.

The obtainable records show that there was issued \$970,000 par value of these bonds for unknown considerations at a discount of \$76,639.32; and that during the year 1855, there was retired \$100,000 par value, being part of the amount paid on a contract from iron which was cancelled.

Aids, Gifts, Grants, and Donations

Under the special act by which the Lake Ontario was incorporated, it acquired preemption rights of selecting and purchasing 250,000 acres of state lands in the counties of Herkimer and Hamilton at 5 cents per acre, contingent upon the sum of construction expenditures made east of Carthage, N. Y., and under a special act, passed March 13, 1857, "all the land acquired on existing contracts, or existing preemption rights, not used for carrier purposes, shall be free and exempt from all taxation until September 12, 1879." The last obtainable report of the Lake Ontario to the state of New York states that it had paid to the state for land granted to it the sum of \$7,000.

Result of Corporate Operations

The railroad of the Lake Ontario had not been completed prior to its demise, which precludes a statement of its income and profit and loss accounts.

Investment in Road and Equipment

The report to the State Engineer of New York for the year 1858 states the investment in road and equipment as \$3,675,858.67. A statement of the expenditures, as classified in its report to the State Engineer, is shown below:

Engineering and agencies.....	\$208,490.47
Land, land damages and fences.....	59,377.06
Graduation and masonry.....	2,231,930.46
Superstructure, including iron.....	533,580.00
Bridges.....	181,869.55
Passenger and freight stations, buildings and fixtures, engine and car houses, machine shops, machinery and fixtures.....	51,570.00
Locomotives and fixtures and snow plows.....	64,460.00
Freight and other cars.....	87,000.00
Passenger and baggage cars.....	26,860.00
Interest.....	154,081.81
Discount on bonds.....	76,639.32
Total.....	3,675,858.67

If the discount on the bonds, \$76,639.32, be eliminated, the balance in the report of expenditures would be decreased to \$3,599,219.35.

Original Cost to Date

The original cost, either of each piece of property or of the property [fol. 130] as a whole, owned by the Lake Ontario and used for its purposes as a common carrier at February 23, 1860, could not be ascertained owing to the absence of its accounting records and those of the contractors who constructed its original road. In its sworn report to the Railroad Commission of New York for September 30, 1858, the cost of the road, exclusive of equipment is shown as \$3,420,899.35.

Miscellaneous Physical Property

At its demise the Lake Ontario owned the lands acquired under preemption rights, as hereinbefore stated, but the records list no investments in miscellaneous physical property.

Schenectady and Duanesburgh Railroad Company

(The Duanesburgh)

Predecessor of the Carrier

Introductory

There are no obtainable accounting records of the Duanesburgh, and the information here submitted was taken from the minute book, the laws of New York, the sworn reports of the company rendered to the state of New York, and from the returns of the carrier on corporate history.

Corporate History

The Duanesburgh was incorporated July 10, 1873, under the general laws of New York, and is a reorganization of the Susquehanna. The latter having defaulted in the payment of the principal and interest of its bonds of 1872, the property was sold under foreclosure to Daniel D. Campbell, who in turn reconveyed it to the Duanesburgh by deed dated July 12, 1873. The articles of association provided the Duanesburgh with an existence of 50 years, which was terminated by merger of its property with that of the carrier August 4, 1903, under a certificate of merger of that date.

Development of Fixed Physical Property

At August 4, 1903, the date of demise, the Duanesburgh owned about 14.189 miles of single track, standard gauge railroad, extending from a connection with the Saratoga at Schenectady, to Delanson, a connection with the Albany. The entire road is located in Schenectady county, N. Y., and is the same road constructed by the

Albany and acquired by the Duanesburgh at the time of reorganization.

History of Corporate Financing

The obtainable records indicate that the Duanesburgh had issued a total of \$950,900 in stocks and in bonds. Of this amount \$600,900 [fol. 131] was outstanding on date of demise. Of the securities outstanding, \$100,900 were in capital stock and \$500,000 in mortgage bonds.

Capital Stock.—The authorized capital stock was \$300,000, divided into shares of \$100 each and classed as common stock. Of this amount \$100,900 was issued to Daniel D. Campbell, et al., as part consideration for the property of the Albany, and this amount was outstanding at date of demise.

Funded Debt.—There were two issues of funded debt, as follows:

20-year 7 per cent bonds of 1870.....	\$350,000
First-mortgage bonds of 1874.....	500,000

Twenty-year 7 per cent mortgage bonds, dated March 1, 1870, amounting to \$350,000, were issued by the Albany in 1870 and were payable in 1890. In the reorganization of that company, the Duanesburgh assumed these bonds as part consideration for the property. They were retired in 1874 by the issue of \$385,000 of the first-mortgage bonds of the Duanesburgh.

First-mortgage 50-year 6 per cent bonds, dated September 1, 1874, amounting to \$500,000, were issued by the Duanesburgh for refunding and general purposes and are payable September 1, 1924, and the interest was guaranteed by the carrier. There was issued \$385,000 par value, at a discount of \$35,000, in the retirement of the bonds of the Albany assumed by the Duanesburgh in the acquisition of the property of that company. The rate of exchange was on the basis of \$1,100 of the bonds of this issue in retirement of each \$1,000 of the bonds of the Albany. The remaining \$115,000 was issued in part payment of the property acquired from the Albany, the details of which are not of record. On date of demise, all of the bonds were outstanding.

Advances.—The carrier operated the property of the Duanesburgh from July 12, 1873, to date of demise, and during this period made cash advances for improvements amounting to \$179,546.08, which was charged to this company in open account. During the same period there was credited to this amount \$12,591.28, leaving a balance on date of demise, of \$166,954.80.

Result of Corporate Operations

The Duanesburgh never operated its property. It was operated by the carrier from July 12, 1873, to June 30, 1874, under an agreement dated July 25, 1872, and from June 30, 1874, to April 28, 1899,

under an agreement dated June 30, 1874. The latter agreement was assigned to the carrier and was effective from April 28, 1899, to August 4, 1903. The first lease provided that the lessee pay as rental a proportion of the earnings, while the last lease provided that the lessee pay as rental the interest on the first-mortgage bonds of the Duaneburgh, which were not to exceed \$500,000. Due to the absence of details in the records, it is not possible to submit a statement of the income and profit and loss accounts.

[fol. 132] Investment in Road and Equipment

The Duaneburgh owned no equipment. The investment in road, including land, on date of demise, is shown by the obtainable records to have been \$767,854.80, made up as follows:

Road Acquired

The Company:

Par value of capital stock issued.....	\$100,000.00
Par value of funded debt assumed.....	350,000.00
Par value of funded debt issued.....	115,000.00

Additions and betterments:

Recorded cash expenditures made by the lessee for road	166,954.80
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Other items not in accord with our present accounting rules:

Discount on funded debt issued.....	35,000.00
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Total	<u>767,854.80</u>
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If the debit of \$35,000 in "Other items" be eliminated, the balance in the investment in road and equipment account would be decreased to \$732,854.80, comprising the following outlays:

Recorded money outlay.....	\$166,954.80
Capital stock issued.....	100,000.00
Funded debt assumed.....	350,000.00
Funded debt issued.....	115,000.00

Original Cost to Date

The original cost to date of the common-carrier property owned or used by the Duaneburgh on date of demise, can not be definitely ascertained owing to the absence of the accounting records of the Albany and those of the contractor who constructed the original road of that company. The railroad of the Duaneburgh was the identical road constructed by the Albany, so if there be added the outlays made by the lessee for additions and betterments to those

reported as the outlays for the property in the report on the Albany, the combined outlay will be as follows:

	Made by	Cash	Securities
The Albany.....		\$600,000
The lessee.....		\$166,954.80	.....

Leased Railway Property

The property of the Duaneburgh was leased from July 12, 1873, to June 30, 1874, and from June 30, 1874, to April 28, 1899, to the carrier. The last lease was assigned to the carrier and continued in effect until August 4, 1903. The obtainable records are meager in details of the rental received by the Duaneburgh for its property. Under the first lease it received a proportion of the revenues, and under the last lease the lessee paid the interest on its first-mortgage bonds not to exceed \$500,000.

[fol. 133] The Schenectady & Susquehanna Rail Road Company

(The Schenectady)

Predecessor of the Duaneburgh

Introductory

There are no obtainable accounting records of the Schenectady, and the information here submitted was taken from the articles of association, the laws of New York, the sworn reports of the Schenectady rendered to the State Engineer of New York, and from the returns of the carrier on corporate history.

Corporate History

The Schenectady, a New York corporation, was incorporated under the general laws of that state on December 27, 1869, for the purpose of constructing, maintaining and operating a railroad from Schenectady to Delanson, N. Y., and connecting with the Albany at Delanson and the Saratoga at Schenectady. The property was sold under a judgment of foreclosure dated May 27, 1873, and was conveyed to Daniel B. Campbell by deed dated July 10, 1873.

Development of Fixed Physical Property

On July 10, 1873, the Schenectady owned a single track, standard gauge, railroad extending from Schenectady to Delanson, N. Y., about 14.189 miles. About 3 miles of the railroad were constructed in 1871 under unknown conditions. Construction was suspended in February 1871, and resumed in September 1871. The entire road was completed and placed in operation about August 19, 1872.

History of Corporate Financing

The obtainable records indicate that the Schenectady issued capital obligations amounting to \$600,000, consisting of \$200,000 capital stock and \$400,000 funded debt, all of which was outstanding on July 10, 1873.

Capital Stock.—The authorized capital stock of the Schenectady was \$225,000, divided into shares of \$100 each and classed as common stock. Of this amount, \$200,000 had been issued and was outstanding on July 10, 1873. Due to the absence of details in the records, it is not possible to state the considerations received for the issued.

Funded Debt.—There were two issues of funded debt, as follows:

20-year 7 per cent mortgage bonds of 1870.....	\$350,000
1-year 7 per cent mortgage bonds of 1872.....	50,000
Total	400,000

Twenty-year 7 per cent mortgage bonds, dated May 1, 1870, amounting to \$350,000, were issued and were outstanding on July 10, 1873. The records do not indicate the purpose for which they [fol. 134] were issued. They were payable in 20 years from May 1, 1870, with interest at 7 per cent. Due to the absence of details in the records, it is not possible to give a statement concerning the considerations received for the issues.

One-year 7 per cent mortgage bonds, dated May 1, 1872, amounting to \$50,000, were issued and were outstanding on July 10, 1873. They were apparently issued to secure funds for temporary financing, as they were payable one year from date of issue. There are no records from which it is possible to make a statement concerning the consideration received for the issues.

Advances.—The carrier operated the Schenectady from completion to July 10, 1873, and during this period made cash expenditures amounting to \$11,170.48 for supplies, labor, real estate, etc., which was charged to the Schenectady in open account. There was credited to this account during the same period \$8,129.58 for rents due the Schenectady, leaving a balance due the carrier of \$3,040.90. This balance appears on the books of the carrier, but was not taken into account by the Schenectady.

Result of Corporate Operations

The Schenectady never operated its property. From its completion to July 10, 1873, it was operated by the carrier, under agreement dated July 25, 1872. Under the terms of this agreement, the lessee was to pay 40 per cent of the gross revenue. The records of the lessee list \$8,129.58 as rents credited to the Schenectady from August 1872, to July 10, 1873, and this amount was applied against the expenditures made by the lessee for account of the Schenectady. There are no records from which a statement of the income and profit and loss can be presented.

A default in the payment of the principal and interest of the Schenectady's one-year 7 per cent mortgage bonds of 1872 resulted in the judgment and foreclosure May 27, 1873, under which its property was finally transferred at July 10, 1873.

Investment in Road and Equipment

The Schenectady owned no equipment. The investment in the road, including land, on July 10, 1873, is shown by the obtainable records to have been \$600,000, made up as follows:

Road Construction:

Par value of capital stock issued.....	\$200,000
Par value of funded debt issued.....	400,000
Total	600,000

Original Cost to Date

The original cost to date of the common-carrier property owned and used by the Schenectady at July 10, 1873, cannot be definitely ascertained owing to the absence of the accounting records of the Schenectady and those of the contractor who constructed its original road. The only information pertaining to the cost of this property to July 10, 1873, is contained in the preceding paragraph relating to the investment in road.

[fol. 135] The New York and Canada Railroad Company

(The New York)

Predecessor of the Carrier

Introductory

The New York maintained accounting records for the period March 15, 1873, to December 31, 1874, only, and the greater part of the information submitted herewith has been taken from the laws of New York, the return on corporate history, and the accounting records of the carrier.

Corporate History

The New York was incorporated under the general laws of New York and by a special act of April 15, 1873, and is a consolidation of the Montreal, the Whitehall, and the New York of 1872, under an agreement dated February 25, 1873, filed with the Secretary of State on April 8, and made effective by the special act of April 15, 1873.

The incorporators of the New York were identified with the interests of the carrier, and their purpose was to form by consolidation

and construction a through line or railroad from Whitehall to Rouse's Point, N. Y., and there to connect with The Grand Trunk Railway Company. The corporate existence of the New York ceased at May 23, 1908, when its property was merged and consolidated with that of the carrier.

Development of Fixed Physical Property

At its demise, the New York owned about 149.169 miles of single track, standard gauge railroad located in the state of New York. The main line extended from Lake Station, near Whitehall, to the New York-Canada line, about 112.749 miles, with the three branch lines as follows:

Baldwin branch: Montcalm Landing to Baldwin, about 4.77 miles.

Ausable branch: Ausable Forks to South Junction, about 18.87 miles.

Mooers branch: Canada Junction to New York-Canada line, about 12.78 miles.

The road owned by the New York was acquired as follows:

By merger:

The Montreal:

	Date acquired	Mileage
Pittsburg to Canada Junction.....	April 15, 1873	23.000
Canada Junction to New York-Canada line.		

The Whitehall:

Fort Ticonderoga to Port Henry.....	April 15, 1873	15.000
[fol. 136] Ausable River, near Ausable Forks, to South Junction.....	April 15, 1873	21.000

By construction:

Lake Station to Fort Ticonderoga.....	1873	90.169
Port Henry to South Junction.....	1875	
Montcalm Landing to Baldwin.....	1875	
Canada Junction to Rouse's Point.....	1876	
Ausable River to Ausable Forks.....	1894	
Rouse's Point to New York-Canada line.....	1906	

Total 149.169

The branch road from Ausable River, near Ausable Forks, to South Junction was a part of the original road of the Whitehall which was acquired April 15, 1873, by the New York. It was extended from Ausable River to Ausable Forks, a distance of about 1.18 miles by the carrier in 1894, at a cost of \$10,327.11.

The property owned by the New York, other than that acquired through the merger of April 15, 1873, was constructed for it by the carrier under an agreement dated March 26, 1872, amended March 11, 1874, and February 20, 1878. This agreement provided that the lessee would construct and equip the additional railroad required and receive as consideration the bonds of the lessor company at 90 and capital stock at 75. It further provided that upon completion the road would be leased to the carrier in perpetuity. The additional road was constructed under contracts between the carrier and independent contractors and was opened for operation from Lake Station, Whitehall, to Rouse's Point, December 1, 1875, by using about 12 miles of the railroad of The Ogdensburgh and Lake Champlain Rail Road Company between Mooers Junction and Rouse's Point. The line from Canada Junction, or Chazy, to Rouse's Point, about 13 miles, was completed and placed in operation about July 1, 1876, and the extension from Ausable River to Ausable Forks was completed and placed in operation in 1894. In 1906, the carrier extended the line from Rouse's Point to the New York-Canada line, about 1.10 miles.

History of Corporate Financing

The financial transactions of the New York were conducted for it by the carrier, either directly or through its agents, and the accounting records of the latter reflect these transactions.

The capital stock and the several classes of long-term debt issued and retired are here stated, with the amount of each outstanding on date of demise:

Description	Originally issued	Retirements	Outstanding
Capital stock.....	\$9,000,000.00	.....	\$9,000,000
Funded debt.....	5,000,000.00	\$5,000,000.00	.....
Nonnegotiable debt to affiliated companies..	14,508,018.07	14,508,018.07	.....
Total	28,508,018.07	19,508,018.07	9,000,000

[fol. 137] The par value of securities issued and the recorded considerations received therefor follows:

Par value issued	Considerations	Recorded value received
\$6,195,985.49	Cash	\$6,195,985.49
8,849,932.58	Construction or property	8,732,582.58
13,247,700.00	Advances by lessee	12,472,700.00
165,000.00	Exchanged for town bonds	165,000.00
49,400.00	Not ascertainable	49,400.00
28,508,018.07	Total	27,615,638.07

The difference of \$892,350 between the par value issued and the recorded amount of considerations received consists of:

Discount on capital stock	\$492,350.00
Discount on first-mortgage sterling bonds.....	400,000.00
Total	892,350.00

The discount on capital stock consists of two items, as follows:

Discount on \$469,400 par value of capital stock issued at 75 in the acquisition of the properties of the Montreal and the Whitehall	\$107,350
Discount on \$1,500,000 par value of capital stock that was issued to the carrier at 75 in part settlement of advances, as per agreement of March 26, 1872.....	375,000
Total	492,350

The \$400,000 was the discount on \$4,000,000 par value of first-mortgage sterling bonds issued by the New York at 90 in part settlement of advances as per agreement of March 26, 1872. The obtainable records of the New York and the carrier do not state what disposition was made of these discount items.

Securities of a par value of \$19,508,018.07 were retired and the recorded considerations given were as follows:

Par value retired	Considerations	Recorded value paid
\$11,870,318.07	Cash	\$11,789,737.31
2,872,700.00	Exchanged for capital stock.....	2,872,700.00
4,600,000.00	Exchanged for funded debt.....	4,600,000.00
165,000.00	Exchanged for town bonds.....	165,000.00
19,508,018.07	Total	19,427,437.31

The difference of \$80,580.76 between the par value retired and the recorded value paid consists of the difference between the par value of the first-mortgage sterling bonds, originally set up at the rate of exchange of \$5 for each pound sterling, and the cash given by the carrier to the English bankers in the retirement of the bonds at [fol. 138] maturity at a lesser rate of exchange, as hereinafter described. The records do not indicate what disposition was made of this difference.

Capital Stock.—The entire amount of common stock authorized, \$4,000,000, was issued, at a discount of \$492,350, for total considerations of \$3,507,650. The character of the considerations received were:

Cash, in the issue of stock at par.....	\$36,700
Advances, for which a par value of \$3,247,700 was issued	2,872,700
Property, for which a par value of \$501,200 was issued..	383,850
Bonds of various townships	165,000
Unascertainable	49,400
Total	3,507,650

Preferred stock amounting to \$5,000,000 was authorized. This stock was preferred both as to principal and as to dividends, which were non-cumulative at 5 per cent. The entire amount was issued to reimburse the carrier for cash advances.

Funded Debt.—First-mortgage 30-year 6 per cent sterling bonds, dated May 1, 1874, amounting to 800,000 pounds sterling, were issued by the New York for the purpose of securing funds to complete its railroad. The bonds were delivered to the carrier at 90, at the exchange rate of \$5 for each pound sterling, making the cash proceeds received \$3,600,000, as hereinbefore described. The carrier sold the bonds through Baring Bros. & Co., Ltd., of London, Eng. They were retired at maturity with cash amounting to \$3,899,095. In addition, \$19,496 was paid the English bankers as commission and \$828.24 on the exchange purchased, making the entire expense for retiring the bonds \$3,919,419.24. The disposition in the accounts of the \$80,580.76 difference between the par value retired and the recorded value paid could not be ascertained.

Debenture 8-year 4½ per cent bonds, dated May 1, 1896, due May 1, 1904, amounting to \$1,000,000, were issued to the carrier in part payment of cash advances and were retired at maturity with a like amount of cash.

Nonnegotiable Debt.—Nonnegotiable debt to affiliated companies was incurred by the receipt of cash advances from the carrier for construction and other purposes, amounting to \$14,508,018.07. This amount was subsequently retired with \$6,870,318.07 cash and \$7,637,700 of securities issued.

Increase or Decrease of Securities in Any Reorganization.—The consolidation of several predecessors to form the New York resulted in a decrease in capital liabilities, the exact amount of which it is not possible to state due to the absence of accounting records. The obtainable records indicate that both the Montreal and the Whitehall had issues of funded debt outstanding at demise that were not considered in the agreement of consolidation. The New York issued a par value of \$501,250 of its capital stock for the property of its predecessors. The basis of exchange for the retirement of the stock of the demised companies was two shares of the new company for each [fol. 139] 100 shares of the Whitehall, and one share of new stock for two shares of the Montreal. Since the Whitehall had an authorized issue of \$1,250,000 of capital stock, and the Montreal an issue of \$1,000,000, it may be said that there was a reduction in the stocks and bonds in the hands of the public by this consolidation.

Aids, Gifts, Grants, and Donations

Under a special act of New York, dated April 3, 1872, entitled, "An Act to facilitate the construction of the New York and Canada Railroad, and extending thereto the provisions of certain laws relating to the Whitehall and Plattsburgh Rail Road Company," the sum of \$70,390 was paid to the carrier and credited to the account of the New York, this being the balance due under the above act.

In addition to the above aid, several towns in New York subscribed

to the stock of the New York, giving their own bonds of the same amount. These were delivered to the carrier and credited to the account of the New York. The towns so subscribing and the amounts were:

Chesterfield, N. Y.....	\$25,000
Plattsburg, N. Y.....	100,000
Westport, N. Y.....	40,000
Total	<u>165,000</u>

Result of Corporate Operations

Under an agreement dated March 26, 1872, the property of the New York was leased in perpetuity to the carrier from the date of completion at an annual rental of 30 per cent of the gross earnings, and in the event that this amount was not sufficient to pay the interest on its funded debt the lessor was obligated to pay it. The proportion of such rental for the years 1873 to 1877, inclusive, amounted to \$391,664.22. After 1877, the lessee paid the interest on the funded debt of the New York and absorbed the earnings in its own accounts.

Investment in Road and Equipment

On December 30, 1910, the investment in road and equipment account of the New York, as stated in the books of the carrier, showed a balance of \$8,732,582.58, which had been established as follows:

Roads acquired:

Recorded outlay in acquisition of the property of the Montreal and the Whitehall:

Money outlay (cash advances made by carrier)	\$713,141.47
Capital stock of a par value of \$501,200, issued at an agreed value of.....	383,850.00
Total.....	<u>1,096,991.47</u>

Less appraised value of equipment and supplies transferred to accounts of the carrier.....	62,701.82
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Cost of roads acquired.....	<u>1,034,289.65</u>
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[fol. 140]

Additions and betterments:

Money outlay (cash advances made by carrier)...	\$7,698,292.93
Grand total	<u>8,732,582.58</u>

The balance in the investment in road and equipment account, so far as it is resolvable into kinds of considerations, comprises the following classes of recorded outlay:

Recorded money outlay.....	8,411,434.40
Capital stock of a par value of \$501,200 issued at an agreed value of.....	383,850.00
Less for equipment and supplies transferred not assignable to either of the classes of outlay above stated	62,701.82

Original Cost to Date

The original cost to date of the common-carrier property owned and used by the New York on date of demise cannot be definitely ascertained owing to the absence of accounting records. There is no accounting record of the cost of about 23 miles originally built as the road of the Montreal, nor of the 36 miles originally built as the road of the Whitehall, nor of any expenditures made by the New York of 1872, though the latter constructed no road up to the date it was merged with the other two companies to form the New York. After this consolidation the last named company constructed about 90.169 miles of road and made extensive additions and betterments to the entire property to the date of its merger with the carrier, the outlays for which are recorded in the accounts of the latter. These outlays may be summarized as follows:

Description of property acquired:	Miles	Recorded money outlay
The Montreal:		
Canada Junction to New York-		
Canada line	23.000	
The Whitehall:		
Fort Ticonderoga to Port Henry...	15.000	
Ausable River to South Junction...	21.000	
Total mileage for which no original cost has been ascertained...	59.000	
Recorded money outlay by the carrier for the New York in the construction of the road between:		
Lake Station—Fort Ticonderoga...	90.169	\$7,698,292.93
Port Henry—South Junction.....		
Montcalm Landing—Baldwin		
Canada Junction—Rouses Point....		
Ausable River—Ausable Forks.....		
And additions and betterments to a and entire property exclusive of equipment.....		

In addition to the above, the carrier has charged to its own investment [fol. 141] in road an equipment account a total of \$153,524.91 for improvements to the property of the New York, expended during the years 1901 to 1903, inclusive.

Leased Railway Property

The agreement of March 26, 1872, between the New York and the carrier provided that upon completion of the property of the former it would be leased to the latter in perpetuity. Under this agreement the carrier was to pay as annual rental an amount equal to 30 per cent of the gross earnings, and if this amount was not sufficient to pay all of the interest on the funded debt of the lessor the balance shall be paid by the carrier. At February 20, 1878, the New York leased all of its property to the carrier in perpetuity from July 1, 1876, under the same terms and conditions as set forth in the agreement of March 26, 1872. The lease further provided that the carrier should maintain and improve the property and that the lessor would issue to the carrier upon request, its securities in payment of such expenditures made by the latter.

On January 14, 1873, the Whitehall leased all of its property to the New York for a term of 999 years from that date. The obtainable records, however, do not state whether this lease was made effective although it was recorded in several of the counties of New York.

The New York & Canada Railroad Company (The New York of 1872)

Predecessor of the New York

Introductory

There are no obtainable accounting records, the information herein contained having been taken from the laws of New York, the articles of association, and from the returns on corporate history of the carrier.

Corporate History

The New York of 1872 was incorporated under the general laws of New York, March 16, 1872, by interests identified with the carrier. Its corporate existence was continued until April 8, 1873, when it was merged and consolidated with the Whitehall and the Montreal to form the New York.

The purpose of the New York of 1872 was to construct, maintain and operate a railroad from Whitehall, along the western shore of Lake Champlain, to the New York-Canada line at or near Rouses Point, N. Y., a distance of about 114 miles. The carrier had secured under perpetual leases the properties of the Albany (February 24, 1870) and the Rensselaer (May 1, 1871), during the two years immediately preceding the incorporation of the New York of 1872.

and it was the purpose of the last named company to construct, [fol. 142] maintain and operate a railroad from a connection with the railroad of the Rensselaer at Whitehall, in a northerly direction along the western shores of Lake Champlain to a connection with the railroad of The Grand Trunk Railway Company at or near Rouses Point, on the New York-Canada line.

Its purpose as originally expressed was augmented by a special act passed March 25, 1873, which authorized it to build a branch road from its main line at Ticonderoga to the foot of Lake George, a distance of about 5 miles.

The consolidation of the New York of 1872 with others to form the New York was effected before the first named had completed the construction of its projected road.

Development of Fixed Physical Property

As previously stated, the New York of 1872 did not complete the construction of its railroad from Whitehall to Rouses Point. On March 26, 1872, it entered into an agreement with the carrier under which the latter agreed to build and equip a railroad from Whitehall to the Canadian line within five years from that date, in payment for which the New York of 1872 would issue its first-mortgage bonds and capital stock. It was further agreed that upon completion of the road the New York of 1872 would lease its entire property to the carrier in perpetuity, at an annual rental of 30 per cent of the gross earnings. During the year 1872, the accounting records of the carrier list some expenditures for land, land damages and fences, graduation and masonry and bridges, trestles and culverts, but the work begun during the life of the New York of 1872 was completed during the life of its successor company, the New York.

History of Corporate Financing

The articles of association authorized the New York of 1872 to issue \$3,000,000 of capital stock, divided into shares of \$100 each. The obtainable records do not indicate that any of this stock was issued, nor is there any evidence that the first-mortgage bonds referred to in the agreement of March 26, 1872 were ever issued.

No further information was obtainable.

The Whitehall and Plattsburgh Railroad Company

(The Whitehall)

Predecessor of the New York

Introductory

There are no obtainable accounting records, the information here submitted having been taken from the laws of New York, the obtainable minute book, and from the returns of the carrier on corporate history.

The Whitehall was incorporated under the general laws of New York and by a special act passed March 20, 1868. Under its articles of association, which were filed February 16, 1866, authority was given to construct, maintain and operate a railroad from Whitehall to Plattsburg, N. Y., a distance of about 90 miles.

Under an agreement dated February 25, 1873, effective April 15, 1873, the Whitehall was merged and consolidated with the Montreal and the New York of 1872 to form the New York.

Development of Fixed Physical Property

At its demise on April 15, 1873, the property of the Whitehall consisted of two unconnected, single track, standard gauge railroads, as follows:

	Miles
Ausable River, near Ausable Forks, to Plattsburg, about.....	21
Fort Ticonderoga to Port Henry, about.....	15
Total	36

Both of these sections were constructed under unknown conditions, the former in 1869 and the latter in 1870.

History of Corporate Financing.

The articles of association authorized capital stock not to exceed \$1,250,000, divided into shares of \$100 each. The obtainable records do not state what amount had been issued and was outstanding at the date of demise.

The lease of the property to the New York dated January 14, 1873, hereinafter referred to, states that the Whitehall had \$250,000 of mortgage bonds outstanding at the date of lease on which a rental of 7 per cent annually was received. It is not possible to make any further statement concerning its securities.

Aids, Gifts, Grants, and Donations

Under an act approved March 20, 1867, the state of New York was authorized to pay to the treasurer of the Whitehall \$5,000 a mile and at that rate for any part of a mile, after the road shall have been constructed, not, however, to exceed 50 miles in all, the road to be completed within two years from the passage of the act. This act was amended in 1869 and 1871, extending the time of completion of the road and reappropriating the unexpended moneys for this aid in accordance with the original act.

In addition to the above, by an act approved May 9, 1867, any of the towns in the counties of Clinton and Essex, and the towns of Putnam, Whitehall and Dresden, in the county of Washington, were authorized to issue bonds for the payment of the capital stock

of the Whitehall to an amount not exceeding 20 per cent of the [fol. 144] assessed valuation of the real and personal property of the town. Such bonds were to be due and payable 30 years from date with interest at 7 per cent. The same act authorized the Whitehall to issue \$50,000 of bonds.

There are no records from which it is possible to ascertain the extent to which the counties and towns aided in the construction of the Whitehall under these acts.

Result of Corporate Operations

The Whitehall has never operated its property. That portion of the road from Fort Ticonderoga to Port Henry was operated from completion to March 1, 1873, by the Vermont Central and the Vermont and Canada Railroads under agreements dated September 26, 1870, and January 30, 1871. The portion from Ausable River to Plattsburg was operated from completion to January 1, 1871, by the Montreal under an agreement dated May 1, 1869; from January 1, 1871, to January 30, 1871, by Rutland Railroad Company under an agreement dated January 23, 1871; and, from January 30, 1871, to March 1, 1873, by the Vermont Central and the Vermont and Canada Railroads under an agreement dated January 30, 1871. In addition to the above leases; the Whitehall leased its property to the New York for a period of 999 years from January 14, 1873. This lease was made subject to a certain lease to Rutland Railroad Company and a lease to the Montreal, and mentions the lease to the Addison Railroad Company for 999 years to the right of way from the New York-Vermont state line to a connection with the Whitehall. The lease of January 14, 1873, was recorded in Essex and Clinton counties, N. Y., in May and April of 1873, but the obtainable records do not state that the lease was made effective prior to the merger.

The Montreal and Plattsburgh Railroad Company

(The Montreal)

Predecessor of the New York

Introductory

There are no accounting or other corporate records, the information here submitted having been taken from the laws of New York and from the returns of the carrier on corporate history.

Corporate History

The Montreal was incorporated under the general laws of New York and by a special act passed April 12, 1867, and is a reorganization following foreclosure sale of the Plattsburgh. The Property did not pass into the possession of the Montreal, however, until August 20, 1868. Under an agreement of February 25, 1873, effective April 15, 1873, the Montreal was merged and consolidated

with the New York of 1872 and the Whitehall to form the New York.

At its demise on April 15, 1873, the property of the Montreal consisted of a single track, standard gauge railroad, extending from [fol. 145] Plattsburg, N. Y., to the New York-Canada line, a distance of about 23 miles, that it had acquired from the Plattsburgh.

History of Corporate Financing

The act of incorporation authorized capital stock of \$1,000,000, divided into shares of \$100 each. There are no records from which it is possible to make any further statement concerning the securities authorized or issued by the Montreal.

Result of Corporate Operations

The Montreal was operated by its own organization from August 20, 1868 to January 1, 1871, and by the Vermont Central and Vermont and Canada Railroads from January 1, 1871, to March 1, 1873. During the latter period of operation, the property of the Montreal was under lease to Rutland Railroad Company from January 1, 1871, to January 30, 1871, and to the Vermont Central and Vermont and Canada Railroads from January 30, 1871, to March 1, 1873. The Montreal also operated the property of the Whitehall from Plattsburg to Ausable River from May 1, 1869, to January 1, 1871. The terms of these various leases and the results of operations are not of record.

The Plattsburgh & Montreal Railroad Company

(The Plattsburgh)

Predecessor of the Montreal

Introductory

There are no obtainable accounting records, the information herein contained having been taken from the minute book, the laws of New York, and from the returns of the carrier on corporate history.

Corporate History

The Plattsburgh was incorporated under the laws of New York and by a special act passed April 7, 1849, but the articles of association were not filed until March 28, 1850. The act authorized the Plattsburgh to construct, maintain and operate a railroad from Plattsburgh, N. Y., to the Canada line.

The Plattsburgh defaulted in the payment of the interest on its first and second-mortgage bonds, in consequence of which its property was sold under foreclosure proceedings on September 24, 1857, to a committee representing the bondholders who held the property in trust until August 20, 1868. At the latter date, the property was conveyed to a committee representing the bondholders who had

previously incorporated themselves on April 12, 1867, as the Montreal. The property was transferred to the latter by deed of August 20, 1868.

[fol. 146] Development of Fixed Physical Property

At its demise on August 20, 1868, the property of the Plattsburgh consisted of a single track, standard gauge railroad, extending from Plattsburg to the New York-Canada line, a distance of about 23 miles, all in the state of New York. This road was constructed under unknown conditions and opened for operation in sections as follows:

Plattsburg to Mooers Junction.....July 26, 1852.
Mooers Junction to New York-Canada line.....September 20, 1852.

History of Corporate Financing

The act of incorporation authorized capital stock of \$500,000, divided into shares of \$50 each. In addition, the Plattsburgh was authorized by its stockholders to issue two series of long-term debt. First-mortgage bonds amounting to \$200,000 were authorized to provide means for completing the road and supplying the necessary equipment. These bonds were dated June 1, 1852, and were payable at June 1, 1862, with interest at 7 per cent. Second-mortgage bonds amounting to \$200,000 were authorized to secure funds for general purposes. This issue was dated July 15, 1853, and was payable August 1, 1868, with interest at 7 per cent.

Result of Corporate Operations

The Plattsburgh was operated by its own organization from completion to February 16, 1855; by Edward V. Price, lessee, under unknown conditions, from February 21, 1857, to August 20, 1868. There are no records from which it is possible to state the results from these operations.

No further information was obtainable.

[fol. 147] Development of Fixed Physical Property

At its demise on August 20, 1868, the property of the Plattsburgh consisted of a single track, standard gauge railroad, extending from Plattsburg to the York-Canada line, a distance of about 23 miles, all in the state of New York. This road was constructed under unknown conditions and opened for operation in sections as follows:

Plattsburg to Mooers Junction.....July 26, 1852.
Mooers Junction to New York-Canada line.....September 20, 1852.

History of Corporate Financing

The act of incorporation authorized capital stock of \$500,000 divided into shares of \$50 each. In addition, the Plattsburgh was

authorized by its stockholders to issue two series of long-term debt. First-mortgage bonds amounting to \$200,000 were authorized to provide means for completing the road and supplying the necessary equipment. These bonds were dated June 1, 1852, and were payable at June 1, 1862, with interest at 7 per cent. Second-mortgage bonds amounting to \$200,000 were authorized to secure funds for general purposes. This issue was dated July 15, 1853, and was payable August 1, 1868, with interest at 7 per cent.

Result of Corporate Operations

The Plattsburgh was operated by its own organization from completion to February 16, 1855; by Edward V. Price, lessee, under unknown conditions, from February 21, 1857, to August 20, 1868. There are no records from which it is possible to state the results from these operations.

No further information was obtainable.

[fol. 148] The Cherry Valley, Sharon and Albany Railroad Company

(The Cherry Valley)

Predecessor of the Carrier

Introductory

There are no accounting records for the Cherry Valley and the information here submitted is taken from the laws of New York, the minute book, sworn reports to the state of New York, and from the returns on corporate history and the accounting records of the carrier.

Corporate History

The Cherry Valley was incorporated under a special act of New York dated April 10, 1860, as the Cherry Valley and Sprakers Railroad Company. This name was changed to Cherry Valley and Mohawk River Railroad Company by a special act of New York dated April 15, 1864, and again changed to that first mentioned by a special act of New York dated April 10, 1869.

The Cherry Valley was authorized by the original act to construct, operate and maintain a railroad from Cherry Valley to a connection with the line of The New York Central Railroad Company at Palatine, N. Y., about 15 miles. By the subsequent acts amending the original act, the Cherry Valley was authorized to extend its line in a southerly direction connecting with the Albany at Cobleskill, N. Y.

The property of the Cherry Valley was merged with that of the carrier on July 17, 1908, under a certificate merger dated July 16, 1908.

Development of Fixed Physical Property

The sworn reports to the New York State Engineer indicate that the Cherry Valley owned at July 17, 1908, a single track, standard gauge railroad extending from Cherry Valley to Cherry Valley Junction, about 21.34 miles of road, construction of which had been undertaken during the years 1869 and 1870 under unknown conditions. At July 15, 1868, the Cherry Valley entered into an agreement with the Albany by which that company agreed to complete its road and take over the operation of it when completed. This agreement was assigned by the Albany to the carrier, under date of May 27, 1870, and the road was completed and placed in operation about June 1, 1870.

History of Corporate Financing

The capital stock and the several classes of long-term debt issued and retired are here stated, with the amount of each outstanding on July 17, 1908:

[fol. 149] Description	Originally issued	Retired	Outstanding
Capital stock	\$289,100.00	.....	\$289,100.00
Two series of first mortgage bonds	525,000.00	\$525,000.00	.....
Gold coin notes	128,476.39	128,476.39	.....
Nonnegotiable debt ...	672,750.00	220,512.30	452,237.07
Total	1,615,326.39	873,988.69	741,337.70

Capital Stock, Common.—The act of incorporation authorized originally an issue of capital stock not to exceed \$100,000, divided into shares of \$50 each. This authorization was increased by amendment on April 15, 1864, to \$500,000, and on April 10, 1866, to \$1,000,000. Of the amount authorized, \$289,100 was issued and outstanding on July 17, 1908. The consideration received for this issue of stock is not of record, but the report to the State Engineer of New York shows a like amount as part of the investment in road and equipment.

Funded Debt.—First-mortgage, 30-year, 7 per cent bonds, amounting to \$225,000, were authorized for the purpose of securing funds for the purchase of iron and completing the road. The minutes of July 12, 1869, state that \$201,500 par value of these bonds were delivered to Dabney, Morgan & Company as collateral security for \$128,476.39 gold coin notes payable in one year, and the remainder were authorized to be sold at not less than 90, but the subsequent records show that of the remainder, \$13,500, was held by the National Central Bank of Cherry Valley as collateral security for money advanced by that bank. The minutes of December 31, 1869, authorized the retirement of the outstanding bonds by another issue of bonds of the amount of \$300,000. It is not possible to state from

the records whether this issue of \$225,000 was retired by the second issue of bonds or from the proceeds of the same.

First-mortgage, 30 year, 7 per cent bonds, amounting to \$300,000, were authorized for refunding purposes and to secure additional funds for completing the road. The considerations received in the issue are not of record. The minutes of December 30, 1870, approve the sale of \$300,000 at 80. The first issue of \$225,000 of bonds, referred to above, may have been retired by this issue or from the proceeds of same. The entire amount, \$300,000, including the discount of \$60,000, is included in the report to the State Engineer of New York as part of the total representing the investment in road and equipment. These bonds were retired through the carrier for \$257,412.50, at a discount of \$42,587.50, and charged by that company to the Cherry Valley in open account.

Gold coin notes amounting to \$128,476.39 were issued to Dabney, Morgan & Company and were payable in one year. The considerations for the issues and retirements are not of record, but from the minutes of the Cherry Valley it is stated that the notes were issued for iron.

Advances.—As has been stated above, the Cherry Valley was completed by the carrier, and the latter also financed it to the date of merger, July 17, 1908. At June 30, 1907, the latest report to the New York State Engineer, the balance sheet statement lists \$452,237.70 as nonnegotiable debt to affiliated companies. This amount consists of the par value of the first-mortgage 30-year bonds, \$300,000, [fol. 150] that the carrier retired at maturity, and \$372,750 interest on these bonds paid by the carrier from 1883 to the date of retirement, less \$220,512.30 credited to the Cherry Valley as income from lease of road from 1883 to 1903.

Result of Corporate Operations

As previously stated, the Cherry Valley entered into an agreement for the operation of its road by the Albany July 15, 1868, which agreement was subsequently assigned, May 27, 1870, to the carrier. Under this agreement, the Cherry Valley was to receive as rental one-half of the earnings after deducting the taxes. The carrier operated the property from June 1, 1870, to July 17, 1908, crediting the Cherry Valley in open account with its proportion of the earnings and charging it with the expenditures for completing the road, the additions and betterments made thereto, the interest paid on its funded debt, and some other unpaid expenses at the date of the lease. The records of the carrier show credits from operation of road amounting to \$108,708.51 from June, 1870, to December, 1879, and for the same period there are payments for interest on funded debt amounting to \$87,045. The net amount of \$21,663.51 was credited to the profit and loss account of the carrier. Subsequent charges and credits account of this operation during the period of 1879 to 1908 were not segregated on the books of the carrier.

The reports of the Cherry Valley to the Railroad Commission of New York are continuous from June 30, 1883, to June 30, 1903,

and state the income from lease of road as \$220,512.30 and the interest on funded debt for the same period as \$372,750, thus making a deficit of \$152,237.70, which is the profit and loss debit balance entered upon the balance sheet statement of June 30, 1907, the latest that was obtainable.

Investment in Road and Equipment

The Cherry Valley owned no equipment. On September 30, 1908, the investment in road showed a balance of \$589,100, which had been established as follows:

Par value of capital stock issued	\$289,100
Par Value of first-mortgage bonds issued	300,000
Total	<u>589,100</u>

As hereinbefore stated, the total shown above includes a discount of \$60,000 incurred in the issue of a par value of \$300,000 of mortgage bonds at 80.

The Cherry Valley stated in its report to the New York State Engineer for 1870 that "a large part of the work was done under contract for a gross sum, such work embracing all the grading, fencing, masonry, bridging, etc.; said contract having been abandoned by the contractors before its completion, thereby leaving disputed claims, so that it is difficult to give the amount in exact terms for each portion of the work." A further statement is made that "The cost of the road was about \$600,000."

[fol. 151]

Original Cost to Date

The original cost to date of the common-carrier property owned and used by the Cherry Valley on July 17, 1908, can not be definitely ascertained owing to the entire absence of accounting records of the Cherry Valley and those of the contractor who constructed the original road. In its sworn report to the Railroad Commission of New York for June 30, 1907, the cost of the road, exclusive of equipment, is shown as \$589,100, comprising its outlay in securities as hereinbefore stated.

The minutes of the Cherry Valley record the following expenditures made on account of construction:

Classification	Amount
Engineering	\$9,973.13
Land and land damages	21,830.20
Ties	31,020.75
Iron	148,316.23
Superstructures	32,732.81
Wood account	1,055.13
Depots, engine and water houses	18,825.57
Construction (not classified)	211,102.19
Taxes	23.24
Interest on town bonds	19,250.00
Expenses account of sale of town bonds	1,476.43
Expenses account of bonds and mortgages for iron....	625.25
Personal expense accounts	300.00
Total	496,530.93

Leased Railway Property

The property of the Cherry Valley was leased to the carrier until July 17, 1908, when it was merged with the property of the lessee. Under the terms of this lease, the lessor was to receive as rental one-half the earnings after deducting taxes as hereinbefore described.

Lessor Companies

Albany and Susquehanna Railroad Company

Development of Fixed Physical Property

The records of the Albany indicate that preliminary surveys were begun in May, 1851, and grading and masonry for about 25 miles on the east end from Albany were commenced in 1853 under contract with independent contractors. Work was suspended in 1854, but was resumed in October, 1858, and finally completed in 1869. The property was placed in operation on the following dates:

[fol. 152]		Mileage
Albany to Central Bridge.....	September 16, 1863	36.20
Central Bridge to Cobleskill....	January 2, 1865	8.59
Cobleskill to Richmondville....	June 1, 1865	5.20
Richmondville to Worcester....	July 17, 1865	11.69
Worcester to Schenevus.....	August 7, 1865	5.00
Schenevus to Oneonta.....	August 28, 1865	15.097
Oneonta to Otego.....	January 23, 1866	8.01
Otego to Unadilla.....	March 21, 1866	9.20
Unadilla to Sydney.....	October 22, 1866	4.39
Sydney to Bainbridge.....	July 10, 1867	5.196
Bainbridge to Afton.....	November 11, 1867	5.792
Afton to Harpursville.....	December 25, 1867	5.776
Harpursville to Binghamton...	January 14, 1869	22.30
Total		142.441

The road was originally constructed of a gauge wider than the present standard gauge, on account of its connection with the New York and Erie Railroad at Binghamton. The carrier in 1871 constructed a third rail so that standard gauge equipment might be used, subsequently changing the entire road to standard gauge and constructing a second track of about 95.330 miles between Delanson and Binghamton.

History of Corporate Financing

The records of the Albany disclose no syndicating transactions.

The capital stock and the several classes of long-term debt issued and retired are here stated, with the amount of each outstanding on date of valuation:

Description	Issued	Retired	Outstanding
Capital stock.....	\$5,095,000	\$1,595,000	\$3,500,000
Six series of mortgage bonds	24,700,000	14,700,000	10,000,000
Nonnegotiable debt to affiliated companies	7,500,000	7,500,000	.....
Total	37,295,000	23,795,000	13,500,000

Funded Debt.—The Albany issued and retired funded debt in exchange for the following considerations.

Issued

Par value	Consideration	Recorded value
\$5,462,406.56	Cash	\$4,701,421.74
468,823.16	Construction of property.....	399,623.16
950,000.00	Town bonds.....	950,000.00
1,595,000.00	Capital stock.....	1,595,000.00
13,619,000.00	Funded debt.....	13,619,000.00
70,000.00	Notes payable.....	70,000.00
7,500,000.00	Advances	7,500,000.00
128,450.00	Services	128,450.00
1,320.28	Interest	1,320.28
29,795,000.00	Total	28,964,815.18

[fol. 153] The difference of \$830,184.82 between the par value issued and the recorded amount of considerations received consists of:

Discount on capital stock.....	\$341,541.62	
Discount on funded debt.....	597,438.24	
		\$938,979.86
Premium on capital stock.....		108,795.04
Net difference.....		\$830,184.82

This difference was disposed of as follows:

Charged to:

Investment in road and equipment....	\$597,438.24	
Profit and loss.....	341,541.62	
		<u>938,979.86</u>

Credited to:

Investment in road and equipment....	1,095.49	
Profit and loss.....	107,699.55	
		<u>108,795.04</u>

Net charges.....	830,184.82
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Securities of a par value of \$16,295,000 were retired with \$1,081,000 of cash and \$15,214,000 of other securities issued. The details of the individual issues of securities will be found in the accounting report hereinbefore referred to.

Nonnegotiable Debt to Affiliated Companies.—From 1870 to 1889, the carrier advanced the Albany in open account for additions and betterments \$7,500,000, which the latter retired at par by the issue of \$2,545,000 of common stock and \$4,955,000 of first-mortgage bonds.

Short-term Notes.—In addition to the foregoing the Albany, during the years 1865 to 1902, issued and retired short-term notes for temporary financing to the amount of \$3,055,036.27, for which the considerations received were \$2,760,434.94 cash, \$265,840.08 construction or property, and \$28,761.25 in payment of interest on funded debt. The entire amount was retired with \$2,985,036.27 cash and \$70,000 of capital stock.

Results of Corporate Operations

Income Account.—The income account of the Albany for year ended on date of valuation, and for the period September 18, 1863, to date of valuation, follows:

Operating income:	Year	Period
Railway operating revenues.....		\$2,669,384.04
Railway operating expenses.....		<u>1,721,708.51</u>
Net revenue from railway operations		947,675.53
Railway tax accruals.....		37,066.38

Nonoperating income:

	Year	Period
Income from lease of road.....	\$786,750.00	36,782,329.76
Income from unfunded securities and accounts.....	235.60	62,928.17
Income from sinking and other re- serve funds.....	1,712.50	358,418.15
Total	<u>788,698.10</u>	<u>37,203,676.08</u>

[fol. 154]

Gross income.....	<u>788,698.10</u>	<u>38,114,285.23</u>
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Deductions from gross income:

Miscellaneous tax accruals.....	4,309.04	26,605.25
Interest on funded debt.....	350,000.00	24,262,498.31
Interest on unfunded debt.....	.....	51,532.83
Maintenance of investment organi- zation	1,545.75	344,904.95
Total	<u>355,854.79</u>	<u>24,685,541.34</u>
Net income.....	<u>432,843.31</u>	<u>13,428,743.89</u>

Disposition of net income:

Dividend appropriations of income.	<u>428,750.00</u>	<u>13,545,955.50</u>
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Income balance transferred to:

Credit of profit and loss.....	4,093.31
Debit of profit and loss.....	117,211.61

If certain delayed income items in the profit and loss account were transferred to the income account for the entire period, there would be a credit balance of \$1,071,595.98 carried to profit and loss instead of the debit balance of \$117,211.61 shown above.

Profit and Loss Account.—The profit and loss account of the Albany on date of valuation follows:

	Credits	
	Year	Period
Delayed income credits.....		\$1,364,792.05
Income from lease of road....	\$1,350,512.36	
Refund of railway tax accruals	14,279.69	
Miscellaneous credits.....		192,624.37
Capital stock, par value, surrendered by the carrier, account of amended lease....	50,000.00	
Adjustments of balance sheet accounts	19,171.20	
Amount allowed in suit of G. S. Marsh	6,268.76	
Proceeds from sale of U. S. Revenue stamps.....	169.11	
Land	8,700.00	
Materials	289.25	
Premium on capital stock sales:		
Forfeited stock..	\$107,699.55	
Other stock.....	326.50	
	108,026.05	
Total		<u>1,557,416.42</u>

	Debits	
Debit balance transferred from income.....		117,211.61
Stock discount extinguished through surplus.....		341,541.62
Delayed income debits.....		175,984.46
Railway operating expenses...	175,984.46	
Miscellaneous debits.....		167,514.51
Material inventory adjustments	63,052.99	
Balance in open account against J. F. Ramsey, president....	97,461.52	
Loss on investment securities..	7,000.00	
[fol. 155] Credit balance on date of valuation.....		<u>755,164.22</u>
Total		<u>1,557,416.42</u>

Investment in Road and Equipment

On date of valuation, the investment in road and equipment, including land, is stated in the books of the Albany as \$14,200,766.55, which had been established as follows:

Original construction:

Year

Period

Money outlay, including notes payable subsequently retired with cash.....		\$5,650,117.03
Capital stock issued.....		114,823.16
Funded debt issued.....		249,600.00
Town bonds exchanged.....		60,100.00

Gross considerations.....		6,074,640.19
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Less:

Proceeds from sale of land and materials	\$31,114.74	
Amounts forfeited by contractor...	13,430.40	
		<u>44,545.14</u>

Net construction		6,030,095.05
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Additions and betterments:

Road:

Money outlay, (cash expenditures made by the carrier)		3,533,728.53
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Equipment:

Money outlay, (including \$3,966,271.47 cash expenditures made by the carrier)	4,723,031.74	
Second-mortgage bonds issued.....	35,200.00	

Total		<u>8,291,960.27</u>
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Other items, not in accord with our present accounting rules:

Credits:

Donations received from state of New York.....	\$750,000.00	
Donations received from individuals	1,725.00	
		<u>721,725.00</u>

Debits:	Year	Period
Discount on securities issued (\$597,438.24) less \$1,095.49 of installments on capital stock forfeited.....	596,342.75	
Commission allowed J. H. Ramsey, president, for serv- ices in securing \$900,000 of town bonds, at 2 per cent..	18,000.00	
Loss on town bonds disposed of	500.00	
Commission allowed Cuggar and Hand for services in se- curing the issue of Albany city bonds.....	1,000.00	
Bonus allowed Baker and De Graff, contractors, for com- pleting track laying by Sep- tember 1, 1865.....	2,000.00	
[fol. 156]		
Payments made to sinking fund for retirement of Al- bany city bonds.....	\$10,000.00	
Net amount of old accounts written off.....	2,593.48	
	630,436.23	
Net credits.....		121,288.77
Grand total.....		14,200,766.55

If the credits in "Other items" were restored and the debits therein eliminated, the balance in the account would be increased to \$14,322,055.32, and, so far as it is resolvable into the kinds of consideration, would comprise the following classes of recorded outlays:

Recorded money outlay.....	\$13,906,877.30
Capital stock issued.....	114,823.16
Funded debt issued.....	284,800.00
Town bonds exchanged.....	60,100.00

Less deductions not assignable specifically to
any one or more of the classes of outlay
above stated:

Proceeds from sale of land and materials.....	31,114.74
Accounts forfeited by contractor.....	13,430.40

The balance mentioned above may include the cost of lands classified as noncarrier and the original cost of certain land sold, the proceeds of which were credited to profit and loss. It may also include

an indeterminable amount representing that part of the cost of property disposed of, in excess of the credits made to the account for proceeds from sales.

Original Cost to Date

Cost of Lands.—The Albany reports the original cost of all lands owned, including both carrier and noncarrier lands, as \$470,962.98. In verifying the returns, \$20,424.56 was deducted as not constituting land costs. The resulting balance of \$450,538.42, made up in part of costs supported by accounting records and in part of substantial deed considerations and other amounts, which the carrier claims to represent costs but which are not supported by accounting records, may be classified as follows:

Classification	Costs supported by accounting records	Amounts not supported by accounting records
Carrier lands owned but leased to the carrier.....	\$444,726.07	\$3,923.70
Rights in private lands; owned but leased to the carrier.....	754.35	632.30
Lands classified as noncarrier, owned	502.00	.....

[fol. 157]

Leased Railway Property

The property of the Albany was leased February 24, 1870, for the term of its charter, to the year 2001, to the carrier. That agreement was amended on March 7, 1876. The terms of the lease and the rental accrued for the year ending on date of valuation are given in the chapter on "Leased railway property" of the report on the carrier.

The Rensselaer and Saratoga Rail Road Company

The accounting and other records of the Rensselaer were destroyed by fire on May 10, 1862. From that date to January 1, 1868, the books of accounts are incomplete. Information contained in this report pertaining to the period prior to the latter date has been compiled from the Rensselaer's sworn reports to the New York state engineer, its corporate records, and the return on corporate history made by the carrier.

Corporate History

The corporations whose franchises and properties have gone to make up the present company, and the dates of the changes in those several corporations, are shown in the following table:

Symbol No.	Corporate name	Date of incorporation	State	Date of acquisition by successor
1	Rensselaer.....	April 14, 1832...	N. Y..	Present company.
2	Glens Falls.....	July 20, 1867...	N. Y..	Acquired by No. 1, July 31, 1906.
3	Salem	June 3, 1865...	N. Y..	Acquired by No. 1, October 20, 1868.
4	The Salem & Rutland Rail Road Company.	February 1, 1867...	Vt....	Acquired by No. 1, October 20, 1868.
5	The Rutland & Washington Rail Road Company.	November 13, 1847... November 12, 1849...	Vt....	Portion of property in New York acquired by No. 3, June 30, 1865.
				Portion of property in Vermont acquired by No. 4, June 30, 1865.
6	Troy	July 2, 2, 1849...	N. Y..	Acquired by No. 3, June 3, 1865.
7	Whitehall	June 7, 1855...	N. Y..	Acquired by No. 1, October 20, 1868.
8	Saratoga and Washington Rail Road Company.	May 2, 1854...	N. Y..	Acquired by No. 7, June 8, 1855.
9	Saratoga and Fort Edward Rail Road Company.	April 17, 1832...	N. Y..	Acquired by No. 8, on date unknown.

[fol. 158] Development of Fixed Physical Property

The property owned or held under perpetual lease by the Rensselaer on date of valuation was acquired as follows:

Road constructed:	Date	Miles
Troy to Ballston Spa.....	March 19, 1836	25.150
Watervliet to Green Island.....	1873	1.080
Glens Falls to Lake George.....	1882	9.060
Total		<u>35.290</u>

Roads acquired:

Saratoga and Whitehall Railroad:

Saratoga Springs to Whitehall.....	October 20, 1868	40.950
Whitehall to New York-Vermont state line	October 20, 1868	6.500

Troy, Salem and Rutland Railroad:

Eagle Bridge to New York-Vermont state line	October 20, 1868	32.400
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Glen Falls Railroad:		Date	Miles
Fort Edward to Glens Falls.....	July	31, 1906	5.400
Total			85.340
Grand total owned.....			120.630
Road held under perpetual lease:			
Salem and Rutland Railroad:			
New York-Vermont state line to Rutland, Vt.	March	19, 1867	33.074
Total mileage owned or held under lease.....			153.704

History of Corporate Financing

The records of the Rensselaer disclose no syndicating transactions.

The capital stock and the several classes of long-term debt issued and retired are here stated, with the amount of each outstanding on date of valuation:

Description	Originally issued	Retired	Outstanding
Capital stock.....	\$10,000,000	.....	\$10,000,000
Funded debt issued.....	2,750,000	\$750,000	2,000,000
Funded debt assumed.....	1,025,000	1,025,000	.....
Nonnegotiable debt.....	4,000,000	4,000,000	.....
Total	17,775,000	5,775,000	12,000,000

Capital Stock.—A par value of \$610,000 was issued for which the considerations received could not be ascertained. A par value of \$3,159,750 was issued for \$1,159,612.50 cash, the discount of \$2,000,137.50 being disposed of in the accounts as hereinafter described. The balance of \$6,230,250 was issued at par for the following considerations:

(fol. 159) Property	\$1,300,000
Other debt retired (advances)	4,000,000
Securities of other companies.....	347,250
Bonus to stockholders	400,000
Stock dividend	183,000
Total	6,230,250

Funded Debt.—The available sources of information show the Rensselaer to have had, since July 1, 1853, five issues of funded debt and three others assumed in the acquisition of property. What issues, if any, were made prior to July 1, 1853, cannot be ascertained due to the absence of all accounting records for that period.

The purposes for which the capital securities were issued and the apparent considerations received therefor appear to have been, as shown by the records:

Issued or Assumed

Par value	Consideration	Recorded value
\$3,467,750	Cash	\$1,435,992.50
6,299,000	Property	5,018,900.00
5,775,000	Other debt retired	5,775,000.00
598,250	Securities of other companies	598,250.00
183,000	Stock dividend .....	.....
400,000	Stock bonus to stockholders .....	.....
135,000	Settlement of current liability due carrier	121,500.00
75,000	Without consideration (issued to carrier in return for latter's guarantee of Rensselaer's funded debt) .....	.....
842,000	Unascertainable	841,575.00
<hr/> 17,775,000	<hr/> Total	<hr/> 14,790,217.50

The difference of \$2,984,782.50 between the par value issued or assumed, and the recorded value of the considerations received, consists of:

Discount on capital stock	\$2,000,137.50
Discount on funded debt	45,545.00
Stock dividend	183,000.00
Stock bonus	400,000.00
Funded debt issued without consideration	75,000.00
Issued to the treasury and subsequently sold	281,100.00
<hr/> Total	<hr/> 2,984,782.50

The disposition of the stock dividend of \$183,000 could not be determined from the records. The balance of \$2,801,782.50 was disposed of as stated below:

Charged to—

Income	\$70.00
Profit and loss	340,661.83
Investment in road and equipment	1,997,138.07
Open account "Consolidation account"	463,912.60

[fol. 160] The nature of the entries comprising the "Consolidation account" cannot be ascertained owing to the absence of accounting records. The account, at September 30, 1867, the earliest obtainable record, contained a credit balance of \$471,912.60. This account was subsequently charged with \$8,000, representing the value of inventoried equipment of the Salem, which was missing at the time

of the consolidation, thus making a credit balance of \$463,912.60, which was closed out in 1871 by charging the account with a like amount of the discount on capital stock.

The details of the individual issues of securities will be found in the accounting report hereinbefore referred to.

Nonnegotiable Debt to Affiliated Companies.—From 1871 to 1892, the carrier made improvements to the property of the Rensselaer amounting to \$4,000,000, charging the latter in open account. The Rensselaer issued a like amount of capital stock in repayment.

Short-term Notes.—In addition to the foregoing, the Rensselaer, during the years 1868 to date of valuation, issued and retired short-term notes for temporary financing aggregating \$455,084.84, for which the considerations received were \$107,484.65 cash and \$347,600.19 in settlement of current liabilities. The entire amount was retired with a like amount of cash. There is no record of notes prior to 1868.

Result of Corporate Operations

Income Account.—The income account of the Rensselaer for the year ending on date of valuation, and for the period October 1, 1866, to date of valuation, follows:

Operating income:	Year	Period
Railway operating revenues		\$6,769,680.99
Railway operating expenses		4,666,678.25
Net revenue from railway operations.....		2,103,002.74
Railway tax accruals		340,774.86
Railway operating income..		1,762,227.88
Nonoperating income:		
Hire of equipment.....		5,431.91
Joint facility rent income.....		53,058.27
Income from lease of road.....	\$1,000.00	44,750.00
Miscellaneous rent income.....	800.00	33,400.00
Dividend income		70,062.87
Income from funded securities....	2,897.11	75,181.33
Income from unfunded securities and accounts		52,931.93
Total.....	4,697.11	334,816.91
Gross income	4,697.11	2,097,044.19

	Year	Period
Deductions from gross income:		
Hire of equipment.....		3,388.86
Joint facility rents.....		7,500.00
Rent for leased roads.....		366,079.49
Miscellaneous rents.....		9,383.97
[fol. 161]		
Miscellaneous tax accruals.....		22,857.20
Interest on unfunded debt.....	888.60	549,333.45
Maintenance of investment organization.....	9,756.73	155,994.88
Total.....	10,645.33	1,114,537.85
Net income.....		982,506.34
Net loss.....	5,948.22	
Income balance transferred to credit of profit and loss.....		982,506.34
Debit of profit and loss.....	5,948.22	

If certain delayed income items in the profit and loss account were transferred to the income account for the entire period, the credit balance carried to profit and loss would be increased to \$985,001.16.

Profit and Loss Account.—The profit and loss account of the Rensselaer, on date of valuation, follows:

Credits		
Credit balance transferred from income.....		\$982,506.34
For period Oct. 1, 1866, to April 30, 1871.....	\$993,911.00	
Less deficit for period May 1, 1871, to date of valuation..	11,404.66	
Delayed income credits.....		11,562.30
Railway operating revenues...	318.30	
Dividend income.....	11,244.00	
Miscellaneous credits.....		396,553.23
Proceeds from sale of old material.....	41,795.07	
Collection of old accounts.....	1,213.63	
Adjustment of balance sheet accounts.....	116,576.25	
Refund by New York Central and Hudson River R. R. Co. of one-third of cost of depot grounds at Schenectady, N. Y....	\$7,777.32	

	Year	Period
Less proportion paid to lessee	3,888.66	
	<u>3,888.66</u>	
Profit on sale of investment securities	3,806.57	
Adjustment of book value of investment securities	195.00	
Credit balance to Sept. 30, 1866—details not available.	229,078.05	
Total		<u>1,390,621.87</u>

[fol. 162]

Debits

Dividend appropriations of surplus		\$874,750.00
Stock discount extinguished through surplus		299,086.83
Debt discount extinguished through surplus		41,575.00
Delayed income debits—railway operating expenses		9,067.48
Miscellaneous debits		112,516.09
Adjustment of balance sheet accounts	\$7,089.29	
Counterfeit money—written off...	45.00	
Liabilities of the Whitehall assumed in the acquisition of its property..	35.76	
Uncollectible accounts—written off	1,709.66	
Depreciation on equipment, written off	26,892.51	
Refund of excess insurance collected on cars destroyed	122.62	
Unexplained cash payments	10,757.59	
Loss on investment securities	56,888.86	
Expenditures for land	6,077.00	
Poultney, Vt.	\$277	
Rutland, Vt.	300	
For extension of Glens Falls to Lake George	\$15,500	
Less proportion paid by lessee	10,000	
	<u>5,500</u>	
Adjustment of book value of investment securities	547.60	
Other	2,350.20	
Credit balance on date of valuation		<u>\$53,626.47</u>
Total		<u>1,390,621.87</u>

Investment in Road and Equipment

On date of valuation, the investment in road and equipment account of the Rensselaer showed a balance of \$11,524,552.13, which had been established as follows:

Property acquired:

Salem.....		\$1,300,000.00
Par value of capital stock issued	\$800,000.00	
Par value of funded debt assumed.....	500,000.00	
Whitehall.....		900,000.00
Par value of capital stock issued	218,900.00	
Par value of capital stock issued in cancellation of stock owned which had previously been acquired at a total cost of \$101,375 of cash and a par value of \$250,000 of mortgage bonds issued.....	281,100.00	
Par value of funded debt assumed.....	400,000.00	
Glens Falls.....		372,321.77
Recorded money outlay.....	273,321.77	
Cancellation of advances	\$66,890.42	
Assumption of liability for advances made by the carrier....	206,431.35	
Par value of funded debt issued	99,000.00	
Total		2,572,321.77

[fol. 163]

Road constructed:

Recorded cost of road constructed to September 30, 1868, for which the character of considerations paid could not be determined due to the absence of accounting records.....		1,707,321.32
Road	1,227,986.32	
Equipment	479,335.00	

Additions and betterments:

Recorded money outlay for road:

Expenditures by the Rensselaer	692,775.76
Advances by the carrier.....	3,448,264.88

 4,141,040.64

 Less proceeds from sale of land
and buildings

3,550.00

 4,137,490.64

Recorded money outlay for equipment:

Expenditures by the Rensselaer	428,254.15
Advances by the carrier.....	140,724.00

 568,978.15

 Less for retirements and depre-
ciation written off.....

32,809.14

 536,169.01

Total 4,673,659.65

Other items:

 Apparent overcharge to construc-
tion at September 30, 1871, being
unexplained difference between
total of journal entry and amount
posted in ledger

43,568.09

 Apparent duplication of charge for
acquiring the property of the
Glens Falls, by setting up the
original cost to date of that prop-
erty in addition to the acquisi-
tion cost to the Rensselaer pre-
viously charged to this amount..

456,431.35

 Amount purporting to represent
cost of property of The Salem
and Rutland Railroad Company,
to which title was not obtained
but which is held under lease in
perpetuity.....

150,632.11

 Par value of capital stock issued as
bonus to stockholders to represent
excess value of property acquired
over securities issued for same...

400,000.00

Discount on capital stock issued...

1,237,138.07

Discount on funded debt issued...

3,900.00

Par value of bonds issued to secure the latter's guarantee of interest on funded debt of the lessor....	75,000.00	
Liability assumed for advances made by the carrier for additions and betterments to the property of the Vermont prior to the assignment of lease by the Rensselaer	204,579.77	
		<u>2,571,249.39</u>
Grand total.....		11,524,552.13

[fol. 164] It the total of the "Other items", which are self-explanatory, be eliminated from the investment in road and equipment account, and a credit applied for the \$8,000 of bonds of the Salem received in lieu of an equivalent amount of equipment; and if the excess payment of \$70,275 for capital stock of the Whitehall, together with \$35.76 of liabilities of the latter assumed and charged to profit and loss, be added, the balance in the road and equipment account would be decreased to \$9,015,613.50.

This balance would comprise the following outlays:

Recorded money outlay, including \$3,795,420.23	
of advances made by the carrier.....	\$5,084,715.56
Par value of capital stock issued.....	1,018,900.00
Par value of bonds issued or assumed	1,249,000.00
Other charges not assignable specifically to any one or more of the classes of outlay above stated.....	1,707,357.08
Less deductions not assignable specifically to any one or more of the classes of outlay above stated:	
Par value of bonds received	8,000.00
Proceeds from sale of land and buildings.....	3,550.00
Equipment retired including depreciation written off	32,809.14

This balance does not include an expenditure of \$6,077 for land charged to profit and loss, nor a credit to the same account of \$3,888.66 for refund of part of the cost of depot grounds at Schenectady.

The balance may also include the cost of lands classified as non-carrier, and of lands classified as partly carrier and partly noncarrier. It may also include that part of the costs of property abandoned, sold, or destroyed, in excess of the credits made to the account for salvage, proceeds from sale, and loss from such property.

Original Cost to Date

The constituent parts of the stated outlays for road, classified according to the companies under which they were made, are shown in the following statement:

Road	Money outlay	Considerations unknown	
		State reports	Other
Salem .....	.....	\$338,688.87	.....
Rutland (including cost of Salem and Rutland Railroad, leased in perpetuity) .....	.....	1,213,507.19	.....
Whitehall	\$4,105.19	.....	.....
Saratoga and Washington Railroad .....	.....	1,757,238.06	.....
[fol. 165] Glens Falls:			
Cash	273,321.77	.....	.....
Mortgage bonds issued.....	.....	.....	100,000.00
Excess of sworn report to state over known considerations .....	.....	84,109.58	.....
Rensselaer:			
Cash	4,141,040.64	.....	.....
Reported outlay to September 30, 1867, less credits from proceeds of sale of land and buildings .....	.....	.....	1,224,436.32
Carrier:			
Cash expenditures for improvements on leased railway property, charged to its investment in road and equipment account.....	1,894,170.21	.....	.....
Total	6,312,637.81	3,393,543.70	1,323,436.32

These amounts do not include \$6,077 for land charged to profit and loss, nor the credit to the same account for \$3,888.66 representing refund of a portion of the cost of station grounds at Schenectady.

Cost of Lands.—The Rensselaer reports the original cost of all lands owned, including both carrier and noncarrier, as \$942,790.51. In verifying the returns a net deduction of \$143,689.04 was made as not properly constituting land costs. The resulting balance of \$799,101.47, made up in part of costs supported by accounting records and in part of substantial deed considerations and other amounts, which the Rensselaer claims to represent costs but which are not supported by accounting records, may be classified as follows:

Classification	Costs supported by accounting records	Costs not supported by accounting records
Carrier lands owned:		
Leased to the carrier:		
In New York	\$347,741.59	\$336,288.63
In Vermont	11,533.00	45,279.60
Total	<u>359,274.59</u>	<u>381,568.23</u>
Rights in public domain; owned but leased to the carrier:		
In New York	<u>400.00</u>	<u>8,293.50</u>
Rights in private lands; owned but leased to the carrier:		
In Vermont	<u>165.00</u>	<u>.....</u>
Lands classified as noncarrier:		
Owned in New York.....	<u>4,521.75</u>	<u>10,962.00</u>
[fol. 166] Lands classified as partly carrier and partly non- carrier:		
Owned in New York	22,535.91	11,380.49

The foregoing amounts do not include certain lands, with costs of \$16,001.75, located on the line of the Saratoga, which are owned and used jointly with the carrier. These costs have been included in the report on the carrier.

Improvements on Leased Railway Property

The records of the Rensselaer show no investment in improvements on leased railway property. It expended through its lessee, the carrier, \$204,579.77 for additions and betterments to the property of the Vermont, formerly held by the Rensselaer under a lease, which was assigned to the carrier upon the latter's lease of the property of the Rensselaer. This expenditure was charged by the Rensselaer to its own investment in road and equipment account.

Investments in Other Companies

The investment of the Rensselaer in other companies is shown in the text of the report. The book value was reduced to \$522,447.87, by adjustments of \$3,567.23 through profit and loss.

The stock owned by the Rensselaer in The Troy Union Railroad Company and The Champlain Transportation Company have been held by the carrier since May 1, 1871, by assignment under the terms and for the duration of the latter's lease of the Rensselaer's property.

In addition to the foregoing securities, the Rensselaer acquired with the property of the Salem the latter's holdings of capital stock of The Salem and Rutland Railroad Company of a par value of \$300,000. Inasmuch as the Rensselaer operates the property of the latter under a lease in perpetuity, it evidently ascribed no value to this stock and has omitted it from the general balance sheet statement.

Leased Railway Property

The Rensselaer, in succeeding to the franchises, rights and privileges of the Salem, acquired a lease in perpetuity, free of rent, of The Salem and Rutland Railroad Company, extending from the New York-Vermont state line to Rutland, Vt., a distance of 33.074 miles. The property of the Rensselaer was leased on May 1, 1871, for the term of its charter to January 1, 2500, to the carrier. The terms of the lease and the rental accrued for the year ending on date of valuation are given in the chapter on "Leased railway property" of the report on the carrier. With this lease the carrier took over also the operation of The Salem and Rutland Railroad Company.

[fol. 167] The Glens Falls Railroad Company

(The Glens Falls)

Predecessors of the Rensselaer

Introductory

There were no accounting or other records of the Glens Falls obtainable, and the information submitted herein was obtained from its sworn reports to the state of New York, and the records of the Rensselaer and of the carrier.

Corporate History

The Glens Falls was incorporated July 26, 1867, under the general laws of New York. On July 31, 1906, it was merged into the Rensselaer. Prior to its merger, it was controlled by the latter company through ownership of its entire capital stock.

Development of Fixed Physical Property

At its demise, the property of the Glens Falls consisted of a single track, standard gauge railroad extending from Fort Edward to Lake George, N. Y., approximately 14.46 miles. That portion of its road from Fort Edward to Glens Falls, N. Y., about 5.40 miles in length, was constructed during the year 1869, partly by independent contractors—Culver and Hatfield—under supervision of the Rensselaer, and partly by forces of the latter which acquired it upon completion, June 24, 1869.

During the year 1882, an extension of the road to Caldwell (now Lake George), N. Y., about 9.06 miles, authorized by a special act of New York of March 14, 1873, was constructed under contract with John O'Brien and John C. Rodgers, independent contractors. The cost of constructing the extension was assumed by the Rensselaer.

History of Corporate Financing

The authorized capital stock was \$200,000, divided into shares of \$25 each. There was issued for unknown considerations \$96,600, and this amount was outstanding at demise of the Glens Falls.

The Glens Falls had an authorized funded debt consisting of \$125,000 of first-mortgage 7 per cent bonds, due July 1, 1894. These bonds were not issued by the Glens Falls and do not appear as a liability outstanding at date of demise. They were turned over to the Rensselaer, which had assumed the liability for the issue under the terms of its lease of the Glens Falls. The Rensselaer delivered a par value of \$99,000 of the bonds to Culver and Hatfield, contractors in the construction of the Glens Falls, and sold the balance of \$26,000 for \$22,100 cash, charging the discount of \$3,900 thus incurred to its own investment in road and equipment account.

Aids, Gifts, Grants and Donations

The New York Legislature authorized the town of Queensbury and the villages of Sandy Hill and Fort Edward, subject to the approval of their taxable residents, to donate in aid of construction of the [fol. 168] Glens Falls certain sums not exceeding an aggregate amount of \$145,000, as follows:

Town of Queensbury, \$100,000,	authorized May 15, 1867.
Village of Sandy Hill, 25,000)	{ authorized May 23, 1867, and amended March 18 and April 24, 1868.
Village of Fort Edward, 20,000)	

What amount, if any, of the authorized donations were received by the Glens Falls can not be ascertained.

Investment in Road and Equipment

The sworn report of the Glens Falls to the Railroad Commission of New York for June 30, 1906, states the investment in road (the

company owned no equipment) as \$456,431.35. This amount is made up as follows:

Original construction under contract	\$250,000.00
Additions and betterments	206,431.35
Total	<u>456,431.35</u>

This balance is comprised of the following elements:

Recorded money outlay	\$273,321.77
By the carrier	\$206,431.35
By the Rensselaer	<u>66,890.42</u>
Funded debt issued by the Rensselaer, par value	99,000.00
Other, for which the considerations given were unascertainable	<u>84,109.58</u>

The accounting records of the carrier and the Rensselaer state that other money outlays were made in addition to those stated above that were charged in their respective accounts to profit and loss. These outlays were as follows:

Preliminary surveys made in 1872 and 1873	\$1,742.66
Expenditures for land for extension of the Glens Falls to Lake George	\$15,500
Less proportion paid by the carrier	<u>10,000</u>
	5,500.00
Total	<u>7,242.66</u>

Original Cost to Date

The original cost to date of the common-carrier property owned and used by the Glens Falls at July 31, 1906, can not be definitely ascertained owing to the entire absence of the accounting records of the Glens Falls and those of the contractors who constructed the original road. In its sworn statement to the Railroad Commission of New York for June 30, 1906, the cost of the road, exclusive of equipment, is shown as \$456,431.35, comprising the outlays in money and securities hereinbefore stated.

The extension from Glens Falls to Lake George, about 9.06 miles, was constructed in 1882. A classified statement, taken from the records of the carrier, shows that these expenditures consisted of the following:

[fol. 109]	Classification	Amount
Engineering and agencies		\$5,954.82
Land and land damages		11,808.95
Graduation and masonry		73,213.51
Bridges		400.00
Superstructure		71,395.09
Fencing		6,305.97
Telegraph line		1,056.98
Passenger and freight stations and buildings		21,337.27
Engine and car houses and fixtures		1,349.18
Water and fuel stations		1,528.67
Slips and wharves		12,080.91
Total		206,431.35

Leased Railway Property

The Rensselaer's lease of the Glens Falls was in consideration of an annual rental of \$1, the maintenance of the property, and the payment of taxes. The original lease, dated June 24, 1869, was superseded by a new lease of similar terms dated January 9, 1882, embracing the property as extended to Lake George.

The Troy, Salem & Rutland Railroad Company

(The Salem)

Introductory

There were no accounting or other records of the Salem obtainable, and the information herein submitted was secured from the return of the carrier on corporate history and the records of the Rensselaer.

Corporate History

The Salem was incorporated June 3, 1865, under the general laws of New York, for the purpose of acquiring the properties of the Troy and the Rutland, which had been sold in foreclosure of defaulted mortgages to Jay Gould and William T. Hart, respectively.

Development of Fixed Physical Property

The property acquired by Gould consists of a single track, standard gauge railroad extending from Eagle Bridge to Salem, N. Y., about 17.4 miles, and was conveyed to the Salem June 3, 1865. The property acquired by Hart was conveyed by him to the Salem June 30, 1865, and comprised approximately 15 miles of single track, standard gauge railroad between Salem and the New York-Vermont state line.

The railroad owned by the Salem was located entirely in the state of New York and was operated by the Rensselaer from the time

the Salem acquired it until October 20, 1868, when the Salem was merged with the Rensselaer, under an agreement dated June 15, 1865.

[fol. 170] The Salem on March 19, 1867, under a lease in perpetuity of even date, acquired the Salem and Rutland Railroad, extending from the New York-Vermont state line to Rutland, Vt., approximately 33.074 miles. It subsequently acquired the entire capital stock of the lessor, and on October 10, 1867, the latter released the Salem from all its obligations under the lease.

History of Corporate Financing

The Salem issued capital obligations amounting to \$1,300,000, consisting of capital stock, \$800,000, divided into shares of \$100 each, and first-mortgage 7 per cent bonds due May 1, 1890, \$500,000, none of which was retired. The considerations received in issue is not of record. The considerations recited in the deeds from Jay Gould and William T. Hart conveying the properties formerly owned by the Troy and the Rutland were \$600,000 and \$400,000, respectively, in addition to which the Salem acquired capital stock of The Salem and Rutland Railroad Company with a total par value of \$300,000.

Result of Corporate Operations

During the period that the Salem was operated under lease by the Rensselaer the latter paid the interest on the Salem's funded debt, maintained its property, and paid all taxes, and at its discretion paid dividends of the net profits from the operation.

Investment in Road and Equipment

No statement of the Salem's investment in road and equipment at its demise can be made.

Original Cost to date

The original cost to date of the common-carrier property owned and used by the Salem on date of demise can not be determined because of the lack of adequate records. As hereinbefore stated, the Salem's property consisted of the property of other companies acquired by it, the approximate cost of which is stated in the reports of the Salem's constituents. The cost of the railroad of the Troy to September 30, 1855, as shown in its sworn report to the New York State Engineer, was \$338,688.87. The cost of the railroad of the Rutland to September 30, 1853, including that portion in Vermont acquired by The Salem and Rutland Railroad Company, which can not be stated separately, was shown in its sworn report to the New York State Engineer as \$1,213,507.19. Combining these amounts, a total of \$1,552,196.06 is obtained, which amount includes the cost of The Salem and Rutland Railroad.

Leased Railway Property

The Salem's lease of The Salem and Rutland Railroad, dated March 19, 1867, stipulated an annual rental of a three-eighths part of the lessee's net income, the maintenance of the property and the payment of taxes. The lessor, on October 22, 1867, released the lessee from all obligations under the terms of its lease. From the time it was acquired by the Salem, The Salem and Rutland Railroad was operated by the Rensselaer as part of the Salem's property.

[fol. 171] The Salem and Rutland Railroad Company

Introductory

No accounting or other records of The Salem and Rutland Railroad Company were obtainable, and the information herein submitted was obtained from the returns of the carrier on corporate history.

Corporate History

The Salem and Rutland Railroad Company was incorporated February 1, 1867, under the general laws of Vermont, and was formed to protect the first-mortgage bondholders of the Rutland. It acquired that portion of the latter's railroad in Vermont extending from the New York-Vermont state line to Rutland, Vt., about 33.074 miles, which by a decree of the chancery court for Rutland county, Vt., had been awarded the trustees of the first mortgage under a writ of possession by strict foreclosure dated April 22, 1865.

Result of Corporate Operations

The records do not show that the company at any time operated its property. By a lease in perpetuity dated March 19, 1867, it conveyed its property to the Salem for an annual rental of a three-eighths part of the lessee's net income, the maintenance of the property and the payment of taxes. The lessee subsequently acquired the entire capital stock of The Salem and Rutland Railroad Company and, on October 10, 1867, the latter released the lessee from all its obligations under the terms of lease.

The Rensselaer upon its acquisition of the property of the Salem acquired the latter's rights in The Salem and Rutland Railroad Company and has since then operated its property.

History of Corporate Financing

The authorized capital stock was \$300,000, divided into shares of \$50 each, and was issued in exchange for the first-mortgage bonds of the Rutland and in settlement of interest thereon due and unpaid.

Investment in Road and Equipment

No statement of The Salem and Rutland Railroad Company's investment in road and equipment is obtainable. The company's property was formerly part of that of the Rutland, and its cost is included in the accounting report of the latter company.

Leased Railway Property

The Salem and Rutland Railroad Company continues as a nominally existent corporation. The Rensselaer paying it a nominal annual amount for organization expenses.

[fol. 172] Rutland and Washington Railroad Company

(The Rutland)

Introductory

No accounting or other records of the Rutland were obtainable. The information herein submitted was secured from its sworn reports to the Railroad Commission of Vermont and to the New York State Engineer, and from the return of the carrier on corporate history.

Corporate History

The Rutland was incorporated under special laws of Vermont passed November 13, 1847, and November 12, 1849, by which it was authorized to construct a railroad from Rutland, Vt., to the New York-Vermont state line; and, under a perpetual lease, free of rent, dated June 24, 1850, it acquired the franchise rights of the Troy for the construction of a railroad from Salem, N. Y., to the New York-Vermont state line. It acquired by construction during the years 1851 and 1852 a single track, standard gauge railroad, extending from Salem to Rutland, about 48.074 miles, which is operated together with the Troy, acquired under lease, from July 2, 1852, until May, 1854, when the Rutland leased its property to Thomas H. Canfield. In May, 1855, in default of the payment of interest on its second and third mortgages, the Rutland was placed in receivership. While the records do not disclose the fact, the lessee of the Rutland apparently also operated the Troy until the latter was placed in receivership March 5, 1855.

Under sale, March 15, 1865, in foreclosure of the second and third mortgages, that portion of the Rutland's road within the state of New York extending from Salem to the New York-Vermont state line was acquired by William T. Hart, on behalf, of the Rutland's stockholders, by referee's deeds dated May 23, 1865. Under a decree of the Chancery Court for Rutland county, Vt., dated April 22, 1865, the trustees of the first mortgage were awarded a writ of possession by strict foreclosure of that portion of the road within the State of Vermont, extending from the New York-Vermont state line to

Rutland, Vt. The road acquired by Hart was conveyed on June 30, 1865, to the Salem, and that portion acquired by the first-mortgage bondholders became the property of The Salem and Rutland Railroad Company, which was incorporated February 1, 1857, to protect holders of the first-mortgage bonds of the Rutland.

History of Corporate Financing

In its report to the Railroad Commission of Vermont, the Rutland states its capital stock as \$950,000, divided into shares of \$100 each, and that this amount was issued for a like amount of cash.

Funded debt was authorized for \$2,000,000, consisting of \$250,000 first-mortgage 6 per cent bonds, payable in annual installments of \$25,000 each, commencing July 1, 1855; \$550,000 second-mortgage 7 per cent convertible bonds, due October 1, 1867, with privilege of prior conversion into stock at par; and \$1,200,000 third-mortgage 6 per cent bonds, due April 1, 1875. The exact amount of funded debt issued can not be stated. The decree of the Court of Chancery for Rutland county, in foreclosure of the first mortgage, recites that \$225,000 of the first-mortgage bonds were issued at par in payment for rail used in construction, and that of the second-mortgage bonds, \$55,000 was actually issued and \$495,000 pledged. The consideration received in the issue, if any, of the \$25,000 remaining first-mortgage bonds and of the \$55,000 second-mortgage bonds is not of record.

In its report to the Railroad Commission of Vermont for the year ended August 31, 1856, the Rutland states that the purpose of the issue of \$1,200,000 third-mortgage bonds was to retire the outstanding funded debt by exchange at par and the payment of floating indebtedness. The amount issued can not be stated from obtainable records.

Investment in Road and Equipment

In its report to the New York State Engineer for the year ended September 30, 1853, (the only report giving the information), the Rutland states its investment in road and equipment as \$1,440,907.19, made up of the following classification:

Road:

Graduation, masonry, bridges and super-structure, including iron, as per contract	\$1,156,322.09
Passenger and freight stations, buildings and fixtures	12,009.05
Engine and car houses, machine shops, machinery and fixtures	45,176.05
Total	1,213,507.19

Equipment:

Locomotives and fixtures, and snowplows.....	73,000.00
Passenger and baggage cars	15,600.00
Freight and other cars	138,800.00
Total	<u>227,400.00</u>
Grand total	<u><u>1,440,907.19</u></u>

Original Cost to Date

The original cost to date of the common-carrier property owned by the Rutland on June 30, 1865, can not be definitely ascertained owing to the entire absence of the accounting records of the Rutland and those of the contractor who constructed the original road. In its sworn report to the New York State Engineer for September 30, 1853, the cost of the road, exclusive of equipment, is shown as \$1,213,507.19, but the nature of the considerations given for the property are not of record.

Leased Railway Property

During May, 1854, the Rutland leased its property for a term of five years to Thomas H. Canfield at an annual rental of \$70,000. In May, 1855, the lessee surrendered the property to the Rutland's receiver.

The Rutland, on July 2, 1852, leased the Troy, extending from Eagle Bridge to Salem, N. Y., about 17.4 miles, for a term of 47 years under an agreement dated June 17, 1852. The lease stipulated an annual rental of \$16,000, the maintenance of the property and the payment of taxes. The property was given up to the lessor's receiver March 5, 1855.

[fol. 174]

Troy & Rutland Railroad Company

(The Troy)

Introductory

There were no accounting or other records of the Troy obtainable and the information here submitted is taken from its sworn reports to the New York State Engineer and the returns of the carrier on corporate history.

Corporate History

The Troy was incorporated July 2, 1849, under the general laws of New York and a special act of the New York Legislature passed April 10, 1849, by which it acquired a franchise to construct and operate a railroad from Troy, N. Y., to the New York-Vermont state line. By lease in perpetuity, free of rent, dated June 24, 1850, the

Troy conveyed its franchise rights for that portion of the railroad between Salem, N. Y., and the New York-Vermont state line to the Rutland Railroad Company.

The railroad constructed was located in the state of New York, and upon its completion was acquired by the Rutland under a lease for 47 years from July 2, 1852. The lessee operated the property until March 5, 1855, when the Troy, in default of interest payments on its second and third mortgage bonds, was placed in the hands of a receiver, who operated it from that date until June 3, 1865.

The property was sold July 11, 1863, in foreclosure of the second and third mortgages, and conveyed by referee's deed of the same date to Jay Gould in behalf of the respective bondholders, and on June 3, 1865, conveyed by him to the Salem.

Development of Fixed Physical Property

The Troy constructed a single track, standard gauge railroad, extending from Eagle Bridge to Salem, N. Y., approximately 17.4 miles, which was completed in 1852.

History of Corporate Financing

The Troy's reports to the New York State Engineer indicate that it issued capital obligations amounting to \$495,000, of which \$10,000 was retired, leaving \$485,000 outstanding at its demise. A summary of the issues and retirements, and the amount outstanding, together with a summary of considerations received and paid in retirement, is as follows:

Description	Issued	Retired	Outstanding
Capital stock	\$325,000	.....	\$325,000
Funded debt	170,000	\$10,000	160,000
Total	495,000	10,000	485,000

The authorized capital stock was \$325,000, divided into shares of \$100 each, and this amount was issued for unknown considerations. [fol. 175] Funded debt issued consisted of \$100,000 of first-mortgage 7 per cent bonds, due in annual installments of \$10,000 each from July 1, 1861; \$50,000 of second-mortgage 7 per cent bonds, due in annual installments of \$10,000 each from January 1, 1864; and \$20,000 third-mortgage 7 per cent bonds, due July 1, 1875. The considerations received in any issue can not be ascertained. Of the \$100,000 of first-mortgage bonds issued, \$10,000 was retired in 1861, apparently for cash.

Investment in Road and Equipment

The Troy owned no equipment. The last report to the New York State Engineer for September 30, 1855, states the investment in road as \$338,688.87, and classifies this amount as follows:

Construction by contract, including graduation and masonry, and bridges and superstructure.....	\$277,305.06
Engineering and agencies	27,261.84
Land, land damages and fences.....	31,227.73
Buildings and fixtures	2,894.24
Total	338,688.87

Original Cost to Date

The original cost to date of the common-carrier property owned and used by the Troy on June 3, 1865, can not be definitely ascertained owing to the entire absence of accounting records of the Troy and those of the contractors who constructed the original road. In its sworn report to the New York State Engineer for September 30, 1855, the cost of the road is shown as \$338,688.87, consisting of indeterminate outlays.

Leased Railway Property

The Troy leased its property to the Rutland for a term of 47 years from July 2, 1852, in consideration of an annual rental of \$16,000, the maintenance of the property and the payment of taxes. In addition, the Troy was to receive one-half of the net earnings of its lessee and the Northern, a connection of the lessee, in excess of 4 per cent on the combined cost of the three properties.

The Saratoga & Whitehall Railroad Company (The Whitehall)

Introductory

There are no accounting or other records of the Whitehall obtainable, and the information here submitted is taken from its sworn reports to the New York State Engineer, the records of its lessee, the Rensselaer, and the corporate history of the carrier.

[fol. 176]

Corporate History

The Whitehall was incorporated June 7, 1855, for a term of 99 years under the general laws of New York. The date of its organization is not of record. It was controlled by the Rensselaer, through the latter's ownership of 2,811 shares of its capital stock out of a total issue of 5,000 shares.

The Whitehall operated its property, together with that of the Ruthall, acquired from May 1, 1856, under perpetual lease until March 14, 1865, when the operation of both the Whitehall and its leased line was taken over by the Rensselaer by lease of the Whitehall and assignment of the latter's lease of the Ruthall.

Effective October 20, 1868, the property of the Whitehall was consolidated and merged with that of its lessee, the Rensselaer, under an agreement dated June 15, 1865, which, during the interim between its date and the consolidation and merger, operated as a lease, superseding that in force from March 14, 1865.

Development of Fixed Physical Property

The Whitehall built no road, but acquired, subject to certain of its mortgage bonds, the property of the Washington, which had been sold under foreclosure of a defaulted second mortgage. The property acquired consisted of a single track, standard gauge railroad, extending from Saratoga Springs to Lake Station (Whitehall), N. Y., about 40.95 miles, with a branch line from Whitehall, to the New York-Vermont state line of about 6.59 miles in length, or a total of about 47.54 miles.

A summary of the mileage owned at demise and operated by the Whitehall prior to its lease to the Rensselaer, with the method of acquisition, is as follows:

Property owned:	Date acquired	Mileage
Acquired in reorganization of The Washington:		
Main line: Saratoga Springs to Lake Station (Whitehall), N. Y.	June 7, 1855	40.95
Branch line: Whitehall, N. Y., to New York-Vermont state line	June 7, 1855	6.59
Total		47.54
Property leased:		
The Ruthall: New York-Vermont state line to Castleton, Vt.	May 1, 1856	6.79
Total operated		54.11

History of Corporate Financing

In its sworn report to the New York State Engineer, the Whitehall states that it issued and assumed capital obligations amounting to \$1,295,000, of which \$395,000 was retired, leaving \$900,000 outstanding.

[fol. 177] A summary of the issues and retirements, and the amount outstanding, together with the considerations received and paid in retirement, follows:

Description	Issued and assumed	Retired	Outstanding
Capital stock	\$500,000	.....	\$500,000
Funded debt	795,000	\$395,000	400,000
Total	1,295,000	395,000	900,000

Capital Stock, Common.—In its sworn report to the New York State Engineer the Whitehall states authorized capital stock as \$500,000, and this amount was issued in the acquisition of the property of the Washington.

Funded Debt.—The Whitehall had four issues of funded debt, of

which three had been retired at October 20, 1868, leaving one outstanding. The detail of each issue follows:

The Washington first-mortgage 7 per cent bonds, due March 1, 1858; assumed and retired, \$250,000.

Rutland extension 7 per cent bonds, due September 1, 1856; assumed and retired, \$100,000.

These bonds were assumed in the acquisition of the Washington. These bonds, together with \$40,000 par value of the mortgage 7 per cent bonds of the Whitehall, were retired at par for \$355,000 cash and \$40,000 for unknown considerations, but due to the absence of accounting records it is not possible to state the considerations applicable to each of the series retired.

Mortgage 7 per cent bonds, due March 1, 1858; issued and retired, \$45,000.

A par value of \$36,531 of these bonds were issued in the acquisition of the Washington, and \$8,469 for a like amount of materials and supplies. The retirement was as indicated in the preceding paragraph.

First-mortgage 7 per cent bonds, due March 1, 1886; issued and outstanding, \$400,000.

These bonds were authorized to obtain funds to retire outstanding funded debt and for general purposes. The entire issue was disposed of at a discount of \$20,500 for \$379,500 cash. It is not possible to state the disposition of the discount.

Result of Corporate Operations

The result of corporate operations for the period June 7, 1855, to September 30, 1864, as stated by the Whitehall in its sworn reports to the New York State Engineer (the information not reported after 1864), is summarized as follows:

	Period
Railway operating revenue	\$1,606,756.34
Railway operating expenses including taxes	1,081,149.20
Net revenue from railway operations	525,607.14
Income from unfunded securities and accounts ...	23.68
Gross income	525,630.82
Rent for leased roads } not separable	387,183.82
Interest on funded debt }	
Total deductions from gross income	387,183.82
Net income	138,447.00
Dividend appropriations of income	35,000.00
Credit balance	103,447.00

The rent for leased road and interest on funded debt was separated to September 30, 1859, only. The amounts of each to that date were \$56,862.19 and \$118,430.54, respectively.

Dividends at 5 per cent were paid for the year 1856 and 2 per cent for the year 1857.

Investment in Road and Equipment

The report of the Whitehall to the Railroad Commission of New York for September 30, 1865 (the last to give the information), states the investment in road and equipment as \$930,207.31. This amount is made up as follows:

Property acquired:

The Washington:

Par value of capital stock issued	\$500,000.00
Par value of funded debt assumed	350,000.00
Par value of funded debt issued	36,531.00
Total	886,531.00

Additions and betterments:

Money outlay	43,676.31
Road	\$4,105.19
Equipment	\$43,153.12
Less retirements	3,582.00 39,571.12
Total	930,207.31

This balance, so far as it is resolvable into kinds of consideration, would comprise the following classes of outlay:

Recorded money outlay	\$43,676.31
Capital stock issued	500,000.00
Funded debt issued	36,531.00
Funded debt assumed	350,000.00

Original Cost to Date

The original cost to date of the common-carrier property owned by the Whitehall on October 20, 1868, can not be definitely ascertained owing to the entire absence of the accounting records of the Whitehall, its predecessor companies, and those of the contractors who constructed the original road. The road consisted of that con-[fol. 179] structed by the Washington, for which there are no accounting records. The cost of this road as reported to the Railroad Commission of New York was \$1,757,238.06, consisting of indeterminate outlays. As hereinbefore stated, the Whitehall made certain additions and betterments to the road for which it made money out-

lay of \$4,105.19. A summary of the outlays made for the entire property is as follows:

Reported outlay	\$1,757,238.06
Recorded money outlay	4,105.19

Leased Railway Property

The property of the Whitehall was acquired by the Rensselaer on March 14, 1865, under a lease the terms of which are not ascertainable. The lease was cancelled by a contract of consolidation and merger between the Rensselaer, the Whitehall and the Salem, dated June 15, 1865, which, pending the effective date of consolidation and merger, operated as a lease of the Whitehall. During the period of this lease the lessee paid the interest on the Whitehall's funded debt, maintained the property, paid all taxes, and at its discretion paid dividends on the net profits from the operations of the combined properties on basis of the Whitehall's representation in the combined stock of the three companies.

Prior to its lease to the Rensselaer, the Whitehall operated from May 1, 1856, under a perpetual lease dated August 6, 1857, the property of the Ruthall, consisting of a railroad from the New York-Vermont state line to Castleton, Vt., a distance of about 6.79 miles. The lease stipulated an annual rental of \$15,342 and an allowance of \$150 per year for the organization expenses, in addition to which the lessee maintained the property and paid all taxes. This lease was assigned to the Rensselaer with its lease of the Whitehall.

The Saratoga and Washington Rail-Road Company

(The Washington)

Predecessor of the Whitehall

There are no accounting or other records of the Washington obtainable, and the information herein submitted was secured from the Washington's sworn reports to the New York State Engineer and from the return of the carrier on corporate history.

Corporate History

The Washington was incorporated under a special act of New York passed May 2, 1834. The Washington operated its property until May 17, 1855, when it was conveyed by referee's deed to the trustees for its second-mortgage bondholders, who acquired it under foreclosure sale April 18, 1855. On June 8, 1855, it was conveyed by deed of the trustees to the Whitehall.

[fol. 180] Development of Fixed Physical Property

The Washington acquired from the Saratoga and Fort Edward Rail-road Company surveys made by that company of a line from Saratoga Springs to Fort Edward, N. Y., and constructed a railroad from Saratoga Springs through Fort Edward to Lake Station (White-

hall), N. Y., approximately 40.95 miles, together with a branch line from Whitehall to the New York-Vermont state line, about 6.59 miles. The railroad constructed was located entirely in the state of New York and was opened for operation as follows:

Saratoga Springs to Ganesevoort.....	August	15, 1848
Ganesevoort to Whitehall.....	December	10, 1848
Whitehall to New York-Vermont state line....	October	1, 1850
Whitehall to Lake Station.....	October	1, 1851

History of Corporate Financing

The Washington states in its reports to the New York State Engineer that it issued and had outstanding at its demise securities amounting to \$1,839,900, consisting of capital stock \$899,900 and funded debt \$940,000.

The authorized capital stock was \$1,350,00, divided into shares of \$100 each, and of this amount \$899,900 was issued for unknown considerations.

Funded debt issued, amounting to \$940,000, included \$250,000 first mortgage, 7 per cent bonds, due March 1, 1858; \$100,000 Rutland extension, 7 per cent bonds, due September 1, 1856, and \$250,000 of second mortgage, 7 per cent bonds, due January 1, 1855. What bonds made up the remainder of \$340,000, or the considerations received in any issue, can not be determined.

Investment in Road and Equipment

In its report to the New York State Engineer for the year ended September 30, 1854 (the last to give the information) the Washington stated its investment in road and equipment as \$1,891,993.49, classified as follows:

Road:

Engineering and agencies	\$82,285.16
Land, land damages and fences	155,444.13
Graduation and masonry	824,959.98
Bridges	29,249.40
Superstructure and iron	566,001.01
Passenger and freight stations and buildings	60,542.61
Engine and car houses, machine shop, machinery and fixtures	38,755.77
Total	1,757,238.06

Equipment:

Locomotives and fixtures and snowplows	60,916.67
Passenger, baggage, freight and other cars.....	73,838.76
Total	134,755.43
Grand total	1,891,993.49

[fol. 181]

Original Cost to Date

The original cost to date of the common-carrier property, owned by the Washington on June 8, 1855, can not be definitely ascertained owing to the entire absence of its accounting records and those of the contractors who constructed the original road. In its sworn report to the Railroad Commission of New York for September 30, 1854, the cost of the road, exclusive of equipment, is shown as \$1,757,238.06, consisting of indeterminate outlays.

Leased Railway Property

The Washington operated the property of the Ruthall from the date of the latter's completion, November 1, 1850, under a perpetual lease dated December 24, 1850, which lease was annulled on May 1, 1855.

Saratoga and Fort Edward Rail Road Company

Predecessor of the Washington

There are no accounting or other records of this company obtainable, and the information herein submitted was secured from the return of the carrier on corporate history.

Corporate History

The Saratoga and Fort Edward Rail Road Company was incorporated April 17, 1832, under a special act of New York. It acquired no railroad property but made surveys of a proposed railroad from Saratoga Springs to Fort Edward, N. Y., which were afterwards acquired by the Washington.

The West Troy & Green Island Rail Road Company

Introductory

There are no accounting or other records obtainable and such information as is here submitted was secured from the sworn reports rendered the state of New York, the records of the Rensselaer, and the return of the carrier on corporate history.

Corporate History

The West Troy & Green Island Rail Road Company was incorporated under the general laws of New York on October 15, 1870, in the interests of the Rensselaer.

The purpose of incorporation was to provide the Rensselaer with a franchise to construct a railroad from its bridge at Green Island to a connection with the railroad of its lessor, the Vermont, at West Troy (now Watervliet, N. Y., a distance of about 1.08 miles.

[fol. 182] Development of Fixed Physical Property

Construction of the road as planned was completed in 1873 by the carrier, and has been operated by the latter since it was opened. The road has been double tracked for about 1.06 miles.

History of Corporate Financing

The authorized capital stock was \$30,000, divided into shares of \$100 each. In its report to the Public Service Commission of New York for the year ended on date of valuation, it is stated that a par value of \$3,200 was issued for a like amount of cash, and that this stock is owned by the Rensselaer, but there is no record of such ownership to be found in the books of the latter.

The Albany and Vermont Railroad Company

(The Vermont)

Corporate History

The corporations whose franchises and properties have gone to make up the present company, and the dates of the changes in those several corporations, are shown in the following table:

Sym- bol No.	Corporate name	Date of incorporation	State	Date of acquisition by successor
1	Vermont	October 6, 1859.....	N. Y..	Present company.
2	Canada	November 7, 1856.....	N. Y..	Conveyed to No. 1, September 22, 1859.
3	Albany Northern.....	February 20, 1851.....	N. Y..	Conveyed to No. 2, December 10, 1856.

Development of Fixed Physical Property

The property acquired from the Canada on September 22, 1859, extending from Albany to Eagle Bridge, a distance of approximately 35 miles, had been constructed by the Northern and opened for operation in 1853. The property was conveyed by the latter to the Canada on December 10, 1856.

That part of the road extending from Waterford Junction to Eagle Bridge, approximately 21 miles, as the result of an action brought by the state of New York, was permanently abandoned and the tracks taken up during the early part of the year 1878.

During the period the railroad between Albany and Waterford Junction was operated by the Rensselaer, the lessee constructed a second track over its entire length of approximately 12 miles.

History of Corporate Financing

The records of the Vermont disclose no syndicating transactions. [fol. 183] The Vermont issued and had outstanding on date of valuation \$600,000 in capital stock.

On the acquisition of the property of the Canada, a par value of \$598,500 in capital stock was issued in exchange for a like amount of first-mortgage bonds of the Northern which had been assumed by the former company. This exchange was on the basis of the par of stock equalling 110 per cent of the bonds, the holders of the latter paying the difference of \$59,850 in cash. The Vermont assigned a book value of \$538,650 to the bonds received in this manner, charging its investment in road and equipment with a corresponding amount. The balance of its capital stock of a par value of \$1,500 was issued for \$645 cash, the discount of \$855 also being charged to investment in road and equipment.

Increase or Decrease of Securities in Reorganization.—The capital stock of the Canada was not recognized in the reorganization. The amount of such stock outstanding at the demise of that company was \$439,004.97, which, together with the shrinkage of \$61,350 affected in the exchange of securities, made a total decrease in securities of \$500,354.97.

Results of Corporate Operations

Income Account.—The income account of the Vermont for year ended on date of valuation, and for the period October 8, 1859, to date of valuation, is stated as follows:

	Year	Period
Railway operating revenues		\$36,657.65
Railway operating expenses		54,544.28
Net loss from railway operations		17,886.63
Income from lease of road	\$20,000.00	1,117,500.00
Miscellaneous rent income		150.00
Dividend income		8,650.00
Income from funded securities	200.00	8,221.69
Income from unfunded securities and accounts		1,554.63
Total nonoperating income ..	20,200.00	1,136,076.32
Gross income	20,200.00	1,118,189.69
Miscellaneous rents	800.00	55,777.57
Miscellaneous tax accruals	186.37	7,629.96
Interest on unfunded debt		14,517.43
Maintenance of investment organization	577.90	27,820.13
Total deductions from gross income	1,564.27	105,745.09
Income balance transferred to credit of profit and loss	18,635.73	1,012,444.60

If certain delayed income items in the profit and loss account were transferred to the income account for the entire period, there would be a credit balance of \$1,009,667.48 carried to profit and loss instead of \$1,012,444.60 as shown above.

Profit and Loss Account.—The profit and loss account of the Vermont, on date of valuation, follows:

[fol. 184]	Debits	Credits
Delayed income debits	\$3,480.54	
Operating revenues... \$17.85		
Operating expenses... 3,433.57		
Railway tax accruals... 29.12		
Dividend appropriations of surplus..	1,048,500.00	
Miscellaneous debits:		
Counterfeit money written off..	22.00	
Cash expenditures for land purchased	2,695.50	
Adjustment of investment in road and equipment to equal capital stock	17,582.72	
Credit balance transferred from income		1,012,444.60

Delayed income credits:

Debits

Credits

Interest on unfunded
debt 237.00Maintenance of invest-
ment organization... 466.42

703.42

Miscellaneous credits:

Deficit in operations to June 14,
1860, charged to investment
in road and equipment

13,576.00

Proceeds from sale of old ma-
terial

5,945.73

Proceeds from sale of old rail..

51,119.70

Proceeds from sale of land at
Albany

4,750.00

Profit on sale of investment se-
curities

1,516.03

Credit balance on date of valuation.. 17,774.72

Total 1,090,055.48 1,090,055.48

Investment in Road and Equipment

The Vermont owns no equipment. On date of valuation, the in-
vestment in road and equipment account of the Vermont carried a
balance of \$600,000, which had been established as follows:

Property acquired:

The Canada:

Capital stock issued, par value \$538,659.00

Current liabilities assumed 17,212.32

Money outlay 27,176.67

Total 583,038.99

Additions and betterments:

Money outlay 20,112.73

Expenditures \$22,892.44

Less proceeds from sale of land. 2,779.71

Total 603,151.72

Other items:

Credits:	Debits	Credits
Adjustment by a corresponding charge to profit and loss to make the balance in the investment in road and equipment account equal the outstanding capital stock	17,582.72	
[fol. 185]		
Debits:		
Discount on capital stock	855.00	
Deficit in operations to June 14, 1860	13,576.00	
Net credit		3,151.72
Total		600,000.00

If the credits in "Other items," that are not in accord with our present accounting rules, were restored, and the debits therein eliminated, the balance in that account would be increased to \$603,151.72.

This balance, so far as it is resolvable into kinds of considerations, would comprise the following elements:

Recorded money outlay	\$50,069.11
Capital stock issued, par value	538,650.00
Current liabilities assumed	17,212.32
Less deduction not assignable specifically to any one or more of the classes of outlay above stated: Proceeds from the sale of land	2,779.71

The foregoing does not include an expenditure of \$2,695.50 for land, charged to profit and loss, but may include the cost of certain land sold, the proceeds of which were credited to profit and loss. It may also include an indeterminable amount representing that part of the cost of property disposed of, in excess of the credits made to the account for proceeds from sales.

The Vermont added no mileage to the road originally constructed but did abandon about 20.82 miles of road between Waterford Junction and Eagle Bridge, the unknown cost of which is still represented in the balance in the investment in road and equipment account.

Leased Railway Property

On June 12, 1860, the Vermont leased its property between Albany and Waterford Junction in perpetuity to the Rensselaer, and the latter on May 1, 1871, assigned the lease to the carrier, which has since operated the property, paying therefor an annual rental

of \$20,000. The latter in addition maintains the property and pays all taxes.

[fol. 186] The Albany, Vermont and Canada Rail Road Company
(The Canada)

Predecessors of the Vermont

No accounting or other records of the Canada are obtainable. The information submitted herein was secured from the carrier's sworn reports to the New York State Engineer and from its returns of the carrier on corporate history.

Corporate History

The Canada was incorporated November 7, 1856, for a term of 100 years, under the general laws of New York, for the purpose of acquiring the property of the Albany Northern, which was conveyed to it subject to a first mortgage of the predecessor company by deed dated December 10, 1856, from Christopher W. Bender, who at a foreclosure sale October 16, 1856, had bid in the property in behalf of its second-mortgage bondholders. The property acquired consisted of a single track, standard gauge railroad, extending from Albany to Eagle Bridge, N. Y., a distance of about 33 miles.

The property of the Canada was sold September 15, 1859, under foreclosure of the first-mortgage of the Albany Northern to Abijah Mann, Jr., in behalf of the first-mortgage bondholders, under referee's deed dated September 19, 1859. He conveyed the property to The Albany by deed dated September 22, 1859.

History of Corporate Financing

The capital obligations of the Canada, so far as can be ascertained from obtainable sources of information, consisted of capital stock issued and funded debt assumed.

The authorized capital stock was \$600,000, divided into shares of \$100 each. Of this amount the Canada in its last report to the New York State Engineer stated that, at September 30, 1855, \$445,000 had been subscribed and subscriptions paid in amounting to \$439,004.97.

Funded debt consisted of \$600,000 first-mortgage 7 per cent bonds of the Albany Northern, due March 1, 1867, and assumed in the acquisition of the latter's property.

Increase or Decrease of Securities in Any Reorganization.—The reorganization of the Albany Northern as the Canada resulted in a decrease in securities, but the exact amount of this decrease can not be stated because of the lack of definite information as to the amount of securities of the predecessor outstanding at its demise. It has been stated in the accounting report of the Albany Northern that its capital obligations outstanding at September 30, 1855, so far as can

be determined, amounted to \$1,648,281.76. Of this amount the Canada assumed \$600,000 of the first-mortgage bonds in acquiring the property, and the remainder of \$1,048,281.76 was apparently eliminated.

[fol. 187] Investment in Road and Equipment

The Canada's investment in road and equipment at its demise can not be ascertain from the obtainable sources of information. In its report for the year ending September 30, 1856, to the New York State Engineer, the Canada states it had expended for additions and betterments the sum of \$10,032.94, and classifies this amount as follows:

Engineering	\$1,560.00
Land and land damages	982.00
Graduation and masonry	2,824.47
Bridges	3,680.19
Passenger and freight stations, buildings and fixtures...	986.28
Total	10,032.94

Original Cost to Date

The original cost to date of the common-carrier property owned and used by the Canada on September 22, 1859, can not be definitely ascertained owing to the entire absence of its accounting records, of its predecessor, and those of the contractors who constructed the original road. It has been stated in the accounting report of the Albany Northern that the cost of the road, exclusive of equipment, was \$1,552,802.63, comprising reported outlays in money and securities. The Canada has stated in its sworn report to the New York State Engineer for September 30, 1856, that it expended \$10,032.94 for additions and betterments. It may, therefore, be said that the reported outlay for the property of the Canada, exclusive of equipment at September 22, 1859, was \$1,562,835.67.

Albany Northern Rail Road

(The Albany Northern)

Predecessor of the Canada

The accounting records of the Albany Northern are fragmentary and do not permit an analysis of its activities. The information here submitted was obtained chiefly from its sworn reports to the New York State Engineer and from the returns of the carrier on corporate history.

Corporate History

The Albany Northern was incorporated February 20, 1851, for a term of 100 years under the general laws of New York. It acquired

by construction a single track, standard gauge railroad, extending from Albany to Eagle Bridge, N. Y., approximately 33 miles, which it opened for operation in 1853.

The Albany Northern defaulted in the payment of interest on its second-mortgage bonds, and on October 31, 1856, was deeded to Christopher W. Bender on behalf of the second-mortgage bondholders who had bid it in, subject to the first-mortgage bonds, as a sale October 16, 1856, in foreclosure of its second mortgage. The property was subsequently conveyed by Bender to the Canada, by deed dated December 10, 1856.

[fol. 188]

History of Corporate Financing

In its last report to the New York State Engineer, the Albany Northern stated that the outstanding capital obligations at September 30, 1855, comprised \$454,882.97 of capital stock and \$1,193,398.79 of funded debt.

The particulars in connection with the several issues of capital obligations, in so far as can be gathered from the Albany Northern's reports to the New York State Engineer, are as follows:

Capital Stock.—The authorized capital stock was \$600,000, divided into shares of \$100 each. Of this amount \$454,882.97 was issued and a corresponding amount charged to investment in road and equipment.

Funded Debt.—First-mortgage 7 per cent bonds, due March 1, 1867, were authorized and issued for \$ 00,000. Of this amount a par value of \$223,000 was issued at 92½, at a discount of \$16,725. The balance of \$377,000 was issued at par for iron rail. The total par value issued was charged to investment in road and equipment.

Second-mortgage 7 per cent bonds, due June 1, 1863, were authorized in the amount of \$500,000. Of this amount a par value of \$184,000 was issued at a discount of \$33,950. The investment in road and equipment was charged with an amount corresponding to the total par value issued. A par value of \$302,000 was pledged as security for short-term notes. The disposition made of the balance of \$14,000 could not be ascertained.

Third-mortgage income 7 per cent bonds, dated November 1, 1853, and due in 3, 5 and 8 years after date, were authorized in the amount of \$250,000. Of this amount a par value of \$102,400 was issued at 85, at a discount of \$15,360, and the investment in road and equipment was charged with an amount equal to the par value issued. What part, if any, of the remainder of \$147,600 was issued is not stated in the Albany Northern's reports. Of the total amount issued, a par value of \$65,700 had been retired at September 30, 1855, by \$64,338.79 of fourth-mortgage bonds.

Fourth-mortgage bonds, dated May 1, 1854, due date unknown, bearing interest at 6 per cent for the first five years and 7 per cent thereafter, were authorized in the amount of \$500,000 to retire a loan of \$300,000 made the Albany Northern by the city of Albany and the outstanding third-mortgage bonds. The Albany Northern

states that at September 30, 1855, \$61,338.79 of these bonds had been applied by the commissioners of the Albany city loan in retirement of \$65,700 of the third-mortgage income bonds.

The city of Albany, by authority of an act of the New York legislature passed March 18, 1854, advanced the Albany Northern the sum of \$300,000. The terms of the loan are not of record. It was apparently retired by fourth-mortgage bonds referred to above.

Investment in Road and Equipment

The report of the Albany Northern to the New York State Engineer for September 30, 1855 (the last report made), states the investment in road and equipment as \$2,010,634.64. This balance was stated to consist of the following items:

[fol. 189] Construction of road:

Capital stock issued (par value)	\$454,882.97
Funded debt issued (par value \$866,400)	820,365.00
Notes payable issued	232,195.68
Additions and betterments: Cash expenditures	230,439.20

Other items, not in accord with the present rules of the Commission:

Discount on funded debt	\$65,035.00
Sundry advances (no details stated)	64,610.62

Estimated amounts:

Salaries and wages due	40,000.00
Construction, materials, equipment and right of way	65,000.00

Interest due on:

Funded debt	23,468.67
Minor mortgages	1,137.50
Current liabilities	12,500.00
	<u>272,751.79</u>

Total 2,010,634.61

If the debits in "other items" were eliminated, the balance in that account would be reduced to \$1,737,882.85, consisting of \$1,552,802.63 road and \$185,080.22 equipment.

In its report to the New York State Engineer, the Albany Northern has stated that this balance consisted of the following outlay:

Recorded money outlay	\$230,439.20
Capital stock issued, par value	454,882.97
Funded debt of a par value of \$866,400, issued at an agreed value of	820,365.00
Notes payable issued	232,195.68

Original Cost to Date

The original cost to date of the common-carrier property owned and used by the Albany Northern on December 10, 1856, can not be definitely ascertained owing to the entire absence of its accounting records and those of the contractors who constructed the original road. In its sworn report to the New York State Engineer for September 30, 1855, the cost of the road, exclusive of equipment, is shown as \$1,552,802.63, comprising the reported outlays as hereinbefore stated.

[fol. 190] Rutland and Whitehall Rail Road Company

(The Ruthall)

Introductory

No accounting records of the Ruthall were obtainable, the information here submitted being taken from its corporate records and its sworn reports to the Vermont Public Service Commission and to us.

Development of Fixed Physical Property

The Ruthall acquired by construction, under contract with R. H. and G. L. Schuyler, its road extending from the New York-Vermont state line to Castleton, approximately 6.833 miles, which was completed November 1, 1850. It also constructed under contract with Arunda hW. Hyde, its vice president upon organization and subsequently its president, a branch road from Hydeville to the shore of Lake Bomoseen, about 1.5 miles in length, which was completed about the first of the year 1854, but subsequently abandoned.

Investment in Road and Equipment

The Ruthall owned no equipment on date of valuation. The investment in road showed a balance of \$255,700, classified by the Ruthall, in its report to the Vermont Public Service Commission for the year ended August 31, 1856, as follows:

Road:

Construction of main road.....	\$176,000
Construction of branch road from Hydeville to Lake Bomoseen (capital stock)	29,700
Depot buildings and turns-about.....	4,000
Total	<hr/> 209,700

Equipment:

Locomotives and other rolling stock.....	45,000
Grand total	<hr/> 255,700

The foregoing includes the original cost of the branch road from Hydeville to Lake Bomoseen, which was abandoned.

Leased Railway Property

The property of the Ruthall was leased in perpetuity from February 1, 1870, to the Rensselaer, which lease was assigned June 15, 1871, to the carrier. The lease provides for an annual rental of \$15,342.

[fol. 191] The Saratoga and Schenectady Rail Road Company

(The Saratoga)

Introductory

As the result of a fire on May 10, 1862, no accounting or corporate records prior to that date were obtainable, excepting a cash book dating from January 1, 1861. The information here submitted was obtained from this cash book, the published reports of the State Engineer and Surveyor, the Railroad Commissioners of the state of New York, the Saratoga's reports to us, and the returns of the carrier on corporate history.

Development of Fixed Physical Property

The Saratoga constructed its road from Schenectady to Saratoga Springs, about 20.806 miles. The road from Schenectady to Ballston Spa was opened July 12, 1832, and from Ballston Spa to Saratoga Springs in 1833.

During the period under lease, the road has been double tracked by the lessees for 11.394 miles of its length.

History of Corporate Financing

Capital Stock.—The authorized capital stock was \$450,000, divided into shares of \$100 each, and classed as common stock. There was issued \$10,000 for a like amount of cash, \$40,000 in exchange for a like amount of funded debt, \$100,000 as a stock dividend, and \$300,000 for unknown considerations. The Saratoga reacquired and reissued \$3,700 of its stock for a like amount of cash.

Funded Debt.—At January 1, 1861, there were \$73,000 of 6 per cent mortgage bonds outstanding that were due serially in three and four years. The interest rate was subsequently changed to 7 per cent and the date of maturity extended to ten years from January 1, 1866. The considerations received are not of record. Of the total issue, \$33,000 was retired by a like amount of cash and \$40,000 by the exchange of a like amount of capital stock.

Result of Corporate Operations

Income Account.—The income account of the Saratoga for year ending on date of valuation, and for the period January 1, 1861, to date of valuation, follows:

Nonoperating income:

	Year	Period
Income from lease of road	\$31,750.00	\$1,746,187.50
Dividend income		9,784.66
Income from funded securities	200.00	5,272.76
Income from unfunded securities and accounts		7,644.43
Total	<u>31,950.00</u>	<u>1,768,889.35</u>
Gross income	<u>31,950.00</u>	<u>1,768,889.35</u>

[fol. 192]

Deductions from gross income:

Miscellaneous tax accruals	311.12	28,583.53
Interest on funded debt		38,820.00
Interest on unfunded debt		337.40
Maintenance on investment organization	536.87	24,236.56
Total	<u>847.99</u>	<u>91,977.49</u>
Net income	<u>31,102.01</u>	<u>1,676,911.86</u>

Disposition of net income:

Dividend appropriations of income	<u>31,500.00</u>	<u>1,648,398.00</u>
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Income balance transferred to:

Credit of profit and loss		28,513.86
Debit of profit and loss	397.99	

Profit and Loss Account.—The profit and loss account of the Saratoga, on date of valuation, follows:

	Credits	Debits
Credit balance transferred from income.....		\$28,513.86
Miscellaneous credits.....		111,067.17
Unredeemed checks \$37.50		
Profit from sale of investment securities	3,225.00	
Credit balance at January 1, 1861	107,804.67	
	<hr/>	
Miscellaneous debits.....	\$133,909.15	
Stock dividend....	100,000.00	
Other (no details) .	33,909.15	
	<hr/>	
Credit balance at date of valuation..	5,671.88	
	<hr/>	
Total	139,581.03	139,581.03

Investment in Road and Equipment

The Saratoga owns no equipment. On date of valuation, the investment in road is stated in its report to us and to the Public Service Commission of New York to be \$450,000, which had been established as follows:

Reported cost of road and equipment.....	\$480,684.15
Less equipment transferred to the Rensselaer.....	30,684.15
	<hr/>
	450,000.00

Cost of Lands.—The Saratoga reports the original cost of all lands owned, including both carrier and non-carrier, as \$147,641.61. In verifying the returns, \$19,796.76 has been deducted as not representing land costs. The resulting balance of \$127,844.85, made up in part of costs supported by accounting records and in part of costs supported by substantial deed considerations and other amounts, which the Saratoga claims to represent costs but which are not supported by accounting records, may be classified as follows:

[fol. 193]	Classification	Costs supported by accounting records	Costs not supported by accounting records
Carrier lands owned; Leased to the carrier		\$102,290.48	\$16,967.86
Rights in private lands; owned; Leased to the carrier			150.00
Lands classified as noncarrier; owned			450.00
Lands classified as party carrier and partly noncarrier; owned		1,986.51	6,000.00

Leased Railway Property

The Saratoga, under date of October 14, 1850, leased its property to the Rensselaer for a term of 15 years from January 1, 1851, for considerations not of record. A new lease in perpetuity from July 1, 1860, was made on June 13, 1860. Under this lease the lessee paid annual rentals of \$30,150 until January 1, 1866, and \$31,750 thereafter. In addition, the lessee maintained the lessor's property and paid all taxes. On May 1, 1871, the Rensselaer assigned its lease to the carrier.

Northern Coal and Iron Company

(The Northern)

Corporate History

The corporation whose franchises and properties have gone to make up the present company, and the dates of the changes in those several corporations, are shown in the following table:

Sym- bol No.	Corporate name	Date of incorporation	State	Date of acquisition by successor
1	Northern	April 27, 1864.....	Pa....	Present company.
2	The Plymouth and Wilkes-Barre Road and Bridge Com- pany.	April 12, 1859, April 14, 1863, March 14, 1865, and letters patent of November 20, 1859.	Pa....	Consolidated with No. 1, November 20, 1873.
[fol. 194]				
3	Baltimore	April 8, 1868.....	Pa....	Consolidated with No. 1, July 6, 1871.
4	Union	April 26, 1864, and let- ters patent of May 30, 1864.	Pa....	Sold to trustees, by deed dated Feb. 20, 1868, and con- veyed by them to No. 3, April 2, 1868.
5	Howard	April 18, 1864.....	Pa....	Merged with No. 4, Feb. 13, 1867.

Development of Fixed Physical Property

The property owned by the Northern on date of valuation was acquired as follows:

	Date acquired	Miles
By consolidation and merger:		
Baltimore Coal and Union Railroad Com- pany, Union Junction to Green Ridge...	July 6, 1871.	15,000

Construction partially by the Howard on
date unknown.

	Date acquired	Miles
The Plymouth and Wilkes-Barre Railroad and Bridge Company, Plymouth Junction to South Wilkes-Barre	Oct. 14, 1873.	2.030

Construction completed by The Plymouth and Wilkes-Barre Railroad and Bridge Company in 1868.

By purchase with coal properties:

Bull Run branch, Bull Run Junction to mines .....	.....	1.250
Plymouth No. 3 branch, Kingston Mines to Plymouth Junction .....	.....	2.150

Date constructed and by whom unknown.

By construction:

Wilkes-Barre to Hudson.....	Nov. 8, 1886.	3.450
Hudson to Union Junction.....	1871.	2.304
Buttonwood branch, Buttonwood to connection with Plymouth branch.....	1906,	1.570
Plymouth No. 5 branch, Bull Run branch to Plymouth No. 3 branch.....	.....	1.020
Scranton branch, Carbon street junction to Lackawanna avenue, Scranton.....	1894,	0.510

Total		29.284
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[fol. 195] History of Corporate Financing

The records of the Northern disclose no syndicating transactions.

The finances of the Northern, as one of the number of companies promoted by the carrier, are administered by the latter. The financial arrangements were made for both its coal and railroad properties, and these were considered as a whole until December 31, 1908, when its railroad property was set up separately on its books. The transactions which follow, therefore, relate to the whole property of the Northern. Its securities have been issued or assumed in the acquisition of its properties or in the payment of advances made to it by the carrier.

The capital stock and the several classes of long-term debt issued and retired are here stated, with the amount of each outstanding on date of valuation:

Description	Originally issued	Retirements and treasury holdings	Outstanding
Capital stock.....	\$1,500,000.00	.....	\$1,500,000.00
Funded debt.....	4,170,127.15	\$4,170,127.15	.....
Nonnegotiable debt.....	22,129,429.15	17,374,328.38	4,755,100.77
Total	\$27,799,556.30	21,544,455.53	6,255,100.77

The foregoing securities were issued at par for a like amount of considerations as shown below:

Cash	\$19,433,040.80
Construction or property	3,898,388.35
Other debt retired	4,168,127.15
Miscellaneous physical property (coal lands)	300,000.00
Total	27,799,556.30

Securities of a par value of \$21,544,455.53 were retired with \$17,376,328.38 cash and \$4,168,127.15 of other securities issued.

Capital Stock.—The authorized capital stock of the Northern is \$2,000,000, divided into shares of \$100 each and classed as common stock. Of this amount, \$102,000 was issued for a like amount of cash and \$1,398,000 was issued to the carrier in part payment of advances.

Funded Debt.—The Northern had four issues of funded debt, amounting in all to \$4,170,127.15, which have been retired with a like amount of cash. They were issued for property or in payment for advances. The details of the individual issues will be found in the accounting report hereinbefore referred to.

[fol. 196] Nonnegotiable Debt.—Nonnegotiable debt to affiliated companies was incurred by the receipt of \$22,129,429.15 in advances from the carrier, of which \$17,374,328.38 was subsequently retired, leaving a balance of \$4,755,100.77 outstanding on date of valuation. The considerations received were \$19,331,040.80 cash and \$2,798,388.35 for construction or property. The retirements were made with \$13,206,201.23 of cash and the issue of \$4,168,127.15 of securities.

Result of Corporate Operations

Income Statement.—The results of corporate operations for the period January 1, 1868, to December 31, 1906, are recorded in the accounting records of the Northern, but since the latter date the revenues and expenses have been merged with those of the carrier. The income account for the period January 1, 1868, to December 31, 1906, follows:

Railway tax accruals	\$960,298.16
Revenue from miscellaneous operations	1,193,529.70
Expenses of miscellaneous operations	1,307,837.55
Net loss from miscellaneous operations	114,307.85
Total operating deficit	1,074,606.01
Income from lease of road	9,503,187.20
Miscellaneous rent income	354,082.24
Total nonoperating income	9,857,269.44
Gross income	8,782,663.43

Interest on funded debt.....	2,331,000.00
Interest on unfunded debt.....	6,300,661.04
Maintenance of investment organization.....	14,321.41
Income transferred to other companies.....	136,680.98

Total deductions from gross income.....	8,782,663.43
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Investment in Road and Equipment

The Northern owns no equipment. On date of valuation, the investment in road showed a balance of \$3,898,388.35, which had been established as follows:

Road acquired:

Baltimore Coal and Union Railroad.....	\$1,225,927.90
Funded debt assumed.....	\$1,000,000.00
Cash advances by the carrier in settlement of current liabilities assumed.....	206,546.40
Other cash advances by the carrier.....	19,381.50

Plymouth and Wilkes-Barre Railroad and Bridge Company.....	265,617.07
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[fol. 197]

Funded debt assumed.....	100,000.00
Cash advances by the carrier in settlement of current liabilities assumed in excess of recorded value of current assets taken over.....	115,615.07
Other cash advances by the carrier.....	50,000.00

Construction—additions and betterments: Cash advances by the carrier.....	2,406,843.38
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Total	3,898,388.35
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Original Cost to Date

Cost of Lands.—The Northern reports the original cost of all lands owned, including both carrier and noncarrier, as \$1,104,924.28. In verifying the returns, a net deduction of \$5,981.77 was made as not constituting land costs. The resulting balance of \$1,061,384.11, made up in part of costs supported by accounting records and in part of substantial deed considerations and other amounts, which the Northern claims to represent costs but which are not supported by accounting records, may be classified as follows:

Classification	Costs supported by accounting records	Costs not supported by accounting records
Carrier lands owned and leased to the carrier	\$831,887.42	\$32,991.49
Rights in private lands owned and leased to the carrier.....	.....	10,000.00
Lands jointly owned; leased to the carrier	835.00	.....
Lands classified as noncarrier; owned	66,327.04	.....
Lands classified as partly carrier and partly noncarrier; owned.....	146,513.16	10,388.40

Miscellaneous Physical Property

The Northern was incorporated primarily to acquire and develop coal lands, and its railroad property was acquired or constructed for this purpose. The investment in miscellaneous physical property, prior to December 31, 1908, was not separated from its other investments. Since that date a separation has been maintained, and the amounts stated below are the balances in those accounts as of date of valuation:

[fol. 198]

Real estate.....	\$59,024.14
Coal lands.....	2,297,688.28
Total	2,356,712.42

Leased Railway Property

The property of the Northern is operated by the carrier in perpetuity under an agreement dated December 1, 1873. The terms of the lease and the rental accrued for the year ending on date of valuation are given in the chapter on "Leased railway property" of the report on the carrier.

The Plymouth and Wilkes-Barre Rail Road and Bridge Company Predecessors of the Northern

Introductory

There are no accounting or other records obtainable, and the information here stated was secured from the returns of the carrier on corporate history.

Corporate History

The Plymouth and Wilkes-Barre Rail Road and Bridge Company was incorporated under special acts of Pennsylvania approved April 12, 1859, April 14, 1863, and March 14, 1865, and under Letters Patent granted by the Governor of Pennsylvania November 30, 1859.

Development of Fixed Physical Property

The company constructed a single track, standard gauge railroad from Plymouth Junction to South Wilkes-Barre, a distance of about 2.03 miles, all in the state of Pennsylvania, which it completed in 1868.

The railroad acquired by construction was operated until November 20, 1873, when the Plymouth and Wilkes-Barre Railroad and Bridge Company was consolidated and merged with the Northern under an agreement of consolidation and merger of October 14, 1873.

History of Corporate Financing

Capital securities issued amounted to \$200,000, consisting of equal amounts of capital stock in shares of \$50 each and first-mortgage 7 per cent 10-year bonds, due December 1, 1876. The consideration received is not ascertainable.

[fol. 199] Baltimore Coal and Union Railroad Company

(The Baltimore)

Predecessor of the Northern

No accounting records of the Baltimore are obtainable. The information here submitted was secured from the corporate records and the returns of the carrier on corporate history.

Corporate History

The Baltimore was incorporated April 8, 1868, under the general laws of Pennsylvania, and perfected its organization April 2, 1868.

The purpose of the corporation was to acquire by purchase the franchises, rights and property of the Union, which had been acquired at Sheriff's sale, subject to two mortgages securing an issue of \$1,000,000 bonds, certain traffic contracts with the carrier, and a certain trackage agreement with the Lehigh Coal & Navigation Company, later explained, by Andrew T. McClintock and Thomas Dickson, trustees, and so conveyed by them to the Baltimore under deed dated April 2, 1868.

The Baltimore operated its railroad in the transportation of its anthracite coal only from the date of acquisition until January 1, 1869. On the latter date, the entire property of the Baltimore was taken under lease dated December 1, 1869, by the carrier and operated by it until August 4, 1871, when the franchises, rights and property of the Baltimore were consolidated and merged into the Northern, under agreement dated July 6, 1871.

Between April 2, 1868, and August 4, 1871, the transportation of general freight and passengers over the railroad of the Baltimore was conducted by the Lehigh Coal & Navigation Company under a twenty-year trackage agreement made between the latter company

and the Union on November 7, 1866, and passing to the Baltimore with its acquisition of the property formerly owned by the Union.

History of Corporate Financing

Capital securities issued or assumed amounted to \$3,000,000 consisting of \$2,000,000 capital stock in shares of \$50 each, and \$1,000,000 mortgage 7 per cent bonds, due January 1, 1887, issued by the Union and assumed by the Baltimore in the acquisition of the former's property. The consideration received in the issue of capital stock can not be determined.

The carrier at various times advanced the Baltimore certain sums which at the date of its consolidation and merger into the Northern is stated on the books of the creditor as having amounted to \$206,546.40.

Investment in Road and Equipment

The Baltimore's investment in its road and equipment, or any of the property owned by it at demise, can not be stated because of the absence of its accounting records and the lack of other sources from which the information could be obtained.

[fol. 200]

Original Cost to Date

For reasons stated in the preceding chapter, the original cost to date of demise of the property of the Baltimore can not be ascertained.

Leased Railway Property

The lease of the property of the Baltimore to the carrier was for a term of 18 years from January 1, 1869, under agreement dated December 1, 1868. The terms of the lease specified the maintenance of the property, the payment of taxes and the interest on \$1,000,000 mortgage 7 per cent bonds issued by the Union and assumed by the Baltimore. In addition, the lessee was to pay 25 cents per ton on all coal mined and taken in excess of the 300,000 tons per annum permitted to be mined and taken without extra compensation.

The trackage agreement under which the Lehigh Coal and Navigation Company conducted the general freight and passenger traffic of the Baltimore was reciprocal to the extent of the operation of the latter's coal trains over the railroad of the former, and specified payments of one cent per mile for passengers, one cent per ton per mile for coal freight, and one and one-half cents per ton per mile for other freight.

The Union Coal Company

(The Union)

Predecessor of the Baltimore

There are no accounting or other corporate records obtainable for the Union and the information here submitted was taken from the

laws of Pennsylvania, the records of its successor company, the Baltimore, and from the returns of the carrier on corporate history.

Corporate History

The Union was incorporated April 26, 1864, under a special act of Pennsylvania and under Letters Patent issued by the Governor of Pennsylvania May 30, 1864. The purposes for which the Union was incorporated were to lease and hold coal lands in the county of Luzerne and Schuylkill, Penn., not to exceed 2,000 acres, and for mining, vending and transporting to market the products of its mines.

The property of the Union was sold under judgments in favor of Quintard, Ward & Company for \$255,013.53, and Alden G. Crosby for \$6,611.88, by Joseph E. Vanleer, sheriff, to Andrew T. McClin-tock and Thomas Dickson, trustees, and was conveyed to them by deed dated February 20, 1868.

Development of Fixed Physical Property

The road of the Union consisted of the single track, narrow guage railroad extending from Union Junction to Green Ridge, Penn., [fol. 201] about 19 miles, that it had acquired from The Howard Coal and Iron Company under a special act of Pennsylvania dated February 13, 1867.

History of Corporate Financing

The act of incorporation authorized capital stock of \$1,000,000, with power to increase the same to \$2,000,000, divided into shares of \$50 each. The act also authorized the Union to borrow money, not to exceed one-half of its capital stock, and to issue bonds or certificates of loan, secured by a mortgage with interest not to exceed 7 per cent per annum.

Leased Railway Property

The railroad of the Union was completed and placed in operation during the year 1867, and was operated by its own organization from completion to February 20, 1868, for the transportation of its anthracite coal, and by the Lehigh Coal & Navigation Company for the transportation of all other freight and passengers, under an agreement dated November 7, 1866, for 20 years from that date. Under the terms of this agreement the Union agreed to "lay down a third rail, making a track of four feet eight and a half inches gauge upon the entire length of their railroad now being constructed as afore-said" so that the Lehigh Coal & Navigation Company might operate its equipment over the road, and in consideration of the same the Lehigh Coal & Navigation Company likewise laid a third rail on the road of the Nanticoke Railroad so that the Union might operate its coal trains over that road. The Lehigh Coal & Navigation Company,

in consideration of the above, agreed to subscribe and pay for in cash at par \$350,000 of the bonds of the Union.

The Howard Coal and Iron Company

(The Howard)

Predecessor of the Union

There are no accounting or other corporated records obtainable for the Howard and the information here submitted was taken from the laws of Pennsylvania, the records of its successor company, the Union, and from the returns of the carrier on corporate history.

Corporate History

The Howard was incorporated August 18, 1864, under a special act of the legislature of Pennsylvania. The act of incorporation granted the Howard the privilege of owning land, mining, preparing for market, selling and disposing of the coal, iron and other minerals found in the lands, and for constructing "such lateral or branch railroads, not exceeding 20 miles, as may be necessary to connect any of their land with other railroads within this Commonwealth."

[fol. 202] Under a special act of Pennsylvania, approved February 13, 1867, the property of the Howard was merged with that of the Union under the name of the latter company. This act provided for the issue of \$100,000 additional capital stock of the Union "with the same or so much thereof as may be necessary for that purpose to redeem and retire the shares of stock which then may have been issued by the said The Howard Coal and Iron Company." The property of the Howard was conveyed to the Union by deed dated February 14, 1867.

History of Corporate Financing

The authorized capital stock was \$100,000, divided into shares of \$50 each.

Development of Fixed Physical Property

The Howard undertook, but did not complete, the construction of about 19 miles of road from Union Junction to Green Ridge, Penn.

The Ticonderoga Railroad Company

(The Ticonderoga)

Introductory

There are no obtainable accounting records prior to March 14, 1902, when the general books were opened. The information here submitted was taken from the articles of association, minute books

of directors and stockholders, and from the existing accounting records.

Development of Fixed Physical Property

Construction of the road was begun in 1890, under contract with P. W. Clement, who was to receive, under the terms of the contract dated July 23, 1890, \$30,000 in capital stock and \$30,000 in bonds. The road was completed about February 2, 1891, and placed in operation on that date.

History of Corporate Financing

The articles of association authorized capital stock of \$30,000, divided into shares of \$100 each. Of the common stock, \$15,000 was issued for an equal amount of cash and \$3,500 in part payment for construction or property. The preferred stock, in amount \$11,500, was issued in part payment for construction or property.

There was but one issue of long-term debt, first-mortgage 30-year 6 per cent bonds, due January 1, 1921, amounting to \$30,000, which was issued in part payment for construction or property, and was outstanding on date of valuation.

The Ticonderoga issued, during the period 1907 to date of valuation, short-term notes for temporary financing amounting to \$14,253.60, all of which were outstanding on date of valuation.

[fol. 203]

Result of Corporate Operations

Income Statement.—The income statement of the Ticonderoga for year ended on date of valuation, and for period February 2, 1891, to date of valuation, follows:

	Year	Period
Income from lease of road	\$3,300.00	\$63,500.00
Gross income	3,300.00	63,500.00
Interest on funded debt	1,800.00	27,000.00
Interest on unfunded debt	919.71	4,160.66
Maintenance of investment organization ..	629.60	10,092.94
Total deductions from gross income ..	3,349.31	41,253.60
Net income .....	.....	22,246.40
Net loss	49.31	.....
Income applied to sinking and other reserve funds .....	.....	14,000.00
Dividend appropriations of income	1,500.00	22,500.00
Total appropriations of income ..	1,500.00	36,500.00
Income balance transferred to debit of profit and loss	1,549.30	14,253.60

Profit and Loss Account.—The only item in the profit and loss account is the debit balance of \$14,253.60, transferred from income.

Investment in Road and Equipment

The Ticonderoga owns no equipment. On date of valuation; the investment in road showed a balance of \$60,000, which had been established as follows:

Original construction:

Money outlay	\$15,000
Capital stock issued	15,000
Common	\$3,500
Preferred	11,500
Funded debt	30,000
Total	60,000

Original Cost to Date

As stated in the text of the report, the obtainable data on original cost to date of the property of the Ticonderoga are represented by the amount of its investment account. In addition to that amount, the carrier has made expenditures to the property for improvements totaling \$55,833.17, classified as follows:

Class	Amount
Engineering	\$14.00
Land	15,130.96
Grading	126.96
Bridges, trestles and culverts	467.60
Ties	(Cr.) 209.90
Rails	(Cr.) 664.60
[fol. 204] Other track material	(Cr.) 339.91
Ballast	69.60
Track laying and surfacing	(Cr.) 25.73
Station and office buildings	19,888.78
Water and fuel stations	187.96
Superstructure (not separable)	183.17
Sidings and spur tracks	21,106.20
Unclassified labor	(Cr.) 41.92
Total	55,833.17

Leased Railway Property

The property of the Ticonderoga has been operated by the carrier since the date the road was opened for operation, under an agreement dated August 13, 1890, and effective for the life of the lessor. The terms of the lease and the rental accrued for the year ending on date

of valuation are given in the chapter on "Leased railway property" of the report on the carrier.

The Chateaugay and Lake Placid Railway Company

(The Placid)

Introductory

There are no obtainable accounting records and the information here submitted was taken from the reports of the Public Service Commission of New York, the annual reports rendered to us, the return of the carrier on corporate history, and from the accounting records of the latter.

Corporate History

The corporations whose franchises and properties have gone to make up the present company, and the dates of the changes in those several corporations, are shown in the following table:

Sym- bol No.	Corporate name	Date of incorporation	State	Date of acquisition by successor
1	Placid	July 24, 1903.....	N. Y..	Present company.
2	Chateaugay	May 15, 1879.....	N. Y..	July 24, 1903.*
3	Chateaugay Railway..	July 13, 1887.....	N. Y..	July 10, 1903.*
4	Saranac	June 13, 1890.....	N. Y..	July 24, 1903.*

[fol. 205] Development of Fixed Physical Property

The property owned by the Placid, on date of valuation, was acquired as follows:

By consolidation:	Date acquired	Miles
Chateaugay	July 24, 1903	16.691
Constructed by the Chateaugay during the period May 15, 1879, to March 30, 1880		
Chateaugay Railway	July 24, 1903	36.694
Constructed 1886 by Chateaugay Ore and Iron Company		18.100
Constructed by Chateaugay 1887-1888		18.594
Saranac	July 24, 1903	10.100
Date of construction unknown.		
Total		63.485

*Merged on respective dates to form No. 1.

History of Corporate Financing

The records of the Placid disclose no syndicating transactions.

The Placid issued and assumed securities amounting to \$3,794,000 in the acquisition and reconstruction of its property, of which \$344,000 has been retired, leaving \$3,450,000 outstanding on date of valuation. A summary of the issues and retirements and the amount outstanding is as follows:

Class	Issued or assumed	Retired	Outstanding
Capital stock issued.....	\$3,450,000	.....	\$3,450,000
Funded debt assumed....	344,000	344,000	.....
Total	3,794,000	344,000	3,450,000

The par value of securities issued and the recorded considerations received therefor follows:

Par value issued	Consideration	Recorded value received
\$794,000	Construction or property.....	\$794,000
3,000,000	Advances	3,000,000
3,794,000	Total	3,794,000

[fol. 206] Securities of the par value of \$344,000 were retired with \$356,160 cash. The difference, \$12,160, was charged to investment in road and equipment.

Capital Stock.—The consolidation agreement authorized \$450,000 of common stock, divided into shares of \$100 each, and provided that it should be issued as follows:

A par value of \$187,500 in exchange for \$75,000 common stock of the Chateaugay, \$187,500 par value in exchange for \$168,000 common stock of the Chateaugay Railway, and \$75,000 par value in exchange for \$225,000 common stock of the Saranac. The records show that the stock was issued in accordance with the terms of the consolidation agreement and charged to investment in road and equipment.

Preferred stock in the amount of \$3,000,000 was authorized for the purpose of paying the carrier for advances made in changing the gauge of the road from narrow to standard, reducing the grades, and in retiring the funded debt that the carrier had assumed at the time of consolidation. The records state that \$3,000,000 par value was issued to the carrier in payment for a like amount of advances.

Funded Debt.—The Placid assumed three issues of funded debt, aggregating \$344,000 par value, all of which have been retired with cash amounting to \$356,160 in the acquisition of property. The difference of \$12,160 was charged to investment in road and equipment.

The details of the individual issues of securities will be found in the accounting report hereinbefore referred to.

Nonnegotiable Debt to Affiliated Companies.—From 1903 to date of valuation, the carrier advanced the Placid in open account \$3,000,000 for the following purposes:

Additions and betterments.....		\$2,588,998.63
Retirement of funded debt.....		356,160.00
Deficit in operations 1903 and 1904	<div> <div>Charged</div> <div>to investment</div> <div>in road and</div> <div>equipment</div> </div>	33,151.62
Interest charged on unpaid advances.....		21,689.75
Total		3,000,000.00

These advances were paid by the issue of a like amount of preferred stock.

Decrease in Stocks, Bonds, or Other Securities in the Consolidation of July 24, 1903.—The par value of capital stock and long-term securities issued or assumed by the Placid in acquiring the property of the three companies consolidated to form the Placid was \$43,000 less than the par value of the securities the consolidating companies had issued at the date of consolidation, as shown by the following tabulation:

[fol. 207]	Rate of interest, per cent	Outstanding securities of consolidating companies	Securities issued or assumed by Placid
Capital stock:			
Chateaugay .....	..	\$75,000	\$187,500
Chateaugay Railway.....	..	168,000	187,500
Saranac .....	..	250,000	75,000
Total .....	..	493,000	450,000
Long-term securities:			
Bonds:			
Chateaugay Railway.....	6	200,000	200,000
Saranac	5	144,000	144,000
Total .....	..	344,000	344,000
Grand total.....	..	837,000	794,000

Results of Corporate Operations

Income Account.—The income account of the Placid for the year ended on date of valuation, and for the period July 24, 1903, to date of valuation, follows:

	Year	Period
Income from lease of road.....	\$126,741.13	\$894,928.65
Railway tax accruals.....	40,561.88	65,886.98
Gross income	86,179.25	829,941.67
Interest on funded debt.....	.....	86,600.00
Rent for leased roads.....	1,141.95	6,207.40
Total deductions from gross income.....	1,141.95	92,807.40
Net income	85,037.30	736,234.27
Dividend appropriations of income..	85,037.30	764,068.78
Income balance transferred to debit of profit and loss.....	.....	27,834.51

Profit and Loss Account.—The profit and loss account of the Placid, on date of valuation, follows:

Credits:

Miscellaneous credits:

Deficit in operation of road during the years 1903 and 1904 credited to this account and charged to investment in road and equipment..... \$33,151.62

Total 33,151.62

Debits:

Debit balance transferred from income..... 27,834.51

Credit balance 5,317.11

Total 33,151.62

[fol. 208] Investment in Road and Equipment

The Placid owns no equipment. On date of valuation, the investment in road account carried a balance of \$3,450,000, which had been established as follows:

Roads acquired:

Chateaugay: Capital stock issued..... \$187,500.00

Chateaugay Railway:
Capital stock issued..... 187,500.00

Funded debt assumed..... 200,000.00

Saranac:
Capital stock issued..... 75,000.00

Funded debt assumed..... 144,000.00

Total 794,000.00

Additions and betterments:

Money outlay (cash expenditures made by the carrier)	2,588,998.63
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Other items:

Deficit in operation of road during the years 1903 and 1904	33,151.62
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Cost above par in retiring \$200,000 par value first mortgage bonds of the Chateaugay Railway.....	12,160.00
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Interest charged by the carrier on unpaid advances	21,689.75
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Total	67,001.37
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Grand total	3,450,000.00
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If the debits in "Other items" were eliminated, the balance would be decreased to \$3,382,998.63.

This balance, so far as it is resolvable into kinds of considerations, would comprise the following elements:

Recorded money outlay.....	\$2,588,998.63
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Capital stock issued, par value.....	450,000.00
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Funded debt assumed, par value.....	344,000.00
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Total	3,382,998.63
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The corrected balance may include certain expenditures for property retired or abandoned, and it may also include the cost of lands classified as noncarrier, or as partly carrier and partly noncarrier.

Original Cost to Date

Cost of Lands.—The Placid reports the original cost of all lands owned, including both carrier and noncarrier, as \$43,566.46. In verifying the returns, a deduction of \$16,823.60 was made as not constituting land costs. The resulting balance of \$26,742.86, made up in part of costs supported by accounting records and in part of substantial deed considerations, which the Placid claims to represent costs but which are not supported by accounting records, may be classified as follows:

[fol. 209]	Classification	Costs supported by accounting records	Costs not supported by accounting records
Carrier lands owned and leased to the carrier		\$8,690.56	\$12,723.95
Lands classified as noncarrier; owned ..		2,604.95	.....
Lands classified as partly carrier and partly noncarrier; owned		2,418.40	305.00

Leased Railway Property

The Chateaugay Railroad, a predecessor of the Placid, leased the property of the Dannemora, extending from Dannemora to Bluff Point, N. Y., for 100 years from July 1, 1879, under an agreement dated May 20, 1879. This lease was assigned to the carrier when the property of the Placid was leased to the latter.

The entire property owned by the Placid and its leased line is operated by the carrier under a lease dated July 1, 1905, and modification dated May 17, 1907, effective 500 years from January 1, 1903. Under the terms of this lease the carrier maintains and operates the property, pays all the taxes, interest upon the bonds for which it has become obligated, and advances the necessary funds to supply any insufficiencies of the earnings to pay the expenses and provide for the costs of improvements and to retire the bonds when due. The lessor shall pay such advances with interest at 4 per cent, dividends upon the preferred stock at 4 per cent issued to the lessee for advances, and any balance from the earnings shall be paid to the lessor.

Chateaugay Railroad Company

(Chateaugay Railroad)

Predecessor of the Placid

Introductory

There are no obtainable accounting records of the Chateaugay Railroad prior to January 1, 1888, and the information here submitted was taken from the sworn reports made to the Railroad Commission of New York and the accounting records subsequent to that date.

Corporate History

The Chateaugay Railroad was incorporated May 15, 1879, under the general laws of New York for a term of 100 years. The purpose of incorporation was to construct, operate and maintain a railroad from the ore beds near Lyon Mountain to a connection with the Dannemora at Dannemora, a distance of about 16.691 miles. The [fol. 210] articles of association provided for the construction of a railroad "of the gauge of not more than three feet and six inches and not less than thirty inches within the rails." Its organization was perfected May 15, 1879. It was controlled by the Chateaugay Ore and Iron Company through ownership of the entire issue of capital stock. The Chateaugay Railroad was consolidated and merged with the Chateaugay Railway and the Saranac to form the Placid under an agreement of consolidation dated July 24, 1903.

Development of Fixed Physical Property

At July 24, 1903, the Chateaugay Railroad owned 16.691 miles of single track, standard gauge railroad, extending from Lyon Mountain to Dannemora, N. Y.

The owned mileage was constructed during the period May 15, 1879, to March 30, 1880, the road being opened for operation on the latter date. The conditions under which the road was constructed were not of record.

History of Corporate Financing

The Chateaugay Railroad issued securities amounting to \$175,000, of which \$100,000 was retired, leaving \$75,000 outstanding at demise. The securities were:

Capital stock	\$75,000
Funded debt	100,000
Total	175,000

Capital Stock, Common.—The authorized capital stock was \$75,000, divided into shares of \$100 each. This amount was issued between May 15, 1879, and September 30, 1880, for unknown considerations. At July 24, 1903, the entire issue of capital stock was held by the Chateaugay Ore and Iron Company.

Funded Debt.—Five-year 7 per cent mortgage bonds, of a par value of \$100,000, dated September 1879, were issued and retired. It is not of record for what purpose these bonds were issued. Neither the consideration received in the issue nor the consideration given in the retirement is of record.

Short-term Notes.—At January 1, 1888, when the accounting records were opened, there was a balance in the notes payable account of \$24,403.41, the considerations for which are not of record. From 1888 to 1903 the Chateaugay Railroad issued, in addition, short-term notes for temporary financing to the amount of \$104,644.73, for \$20,981.80 cash and \$83,662.93 for construction or property. There was retired \$10,800 by the proceeds from the sale of narrow gauge equipment, leaving a balance of \$118,248.14 outstanding.

Results of Corporate Operations

The income account of the Chateaugay Railroad for the period March 30, 1880, to July 24, 1903, follows:

[fol. 211] Operating income:

Railway operating revenues	\$3,779,078.64
Railway operating expenses	3,075,245.72
Net revenue from railway operations	703,832.92
Railway tax accruals	64,952.54
Railway operating income	638,880.38

Nonoperating income:

Miscellaneous rent income	1,222.25
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Gross income	640,102.63
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Deductions from gross income:

Rent for leased roads	252,775.50
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Miscellaneous rents	600.00
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Interest on unfunded debt	20,693.72
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Total deductions from gross income	274,069.22
--	------------

Income balance transferred to debit of profit and loss	366,033.41
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If the delayed income debit in profit and loss account was applied to income, the credit balance transferred to profit and loss would be \$360,046.03.

Profit and Loss.—The profit and loss account of the Chateaugay Railroad, at July 24, 1903, follows:

	Debit	Credit
Credit balance transferred from income.		\$366,033.41
Delayed income debits: Deficit from operation of Saranac from January 1, 1897, to January 1, 1903	\$5,987.38	

Miscellaneous debits:

Net amount transferred from the profit and loss account of this company to the Chateaugay Ore and Iron Company	62,499.03
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Credit balance at July 24, 1903.	297,547.00
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Total	366,033.41	366,033.41
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Investment in Road and Equipment

The balance in the investment in road and equipment account at July 24, 1903, was \$510,480.18. This balance is summarized as follows:

Original construction:

Recorded money outlay, including notes payable.	\$252,656.10
Cash	\$251,535.96
Notes payable	1,120.14

Additions and betterments:

Road: money outlay for changing the road gauge from narrow to standard in 1902 and 1903.....	13,697.66
[fol. 212] Equipment: Recorded money outlay, including notes payable....	274,360.80
Cash	\$191,818.01
Notes payable	82,542.79
Less:	
Equipment retired..	11,500.00
Depreciation written off	18,734.38
	<u>30,234.38</u>
	244,126.42
Total	<u>510,480.18</u>

This balance comprises the following elements:

Recorded money outlay	\$457,051.63
Notes payable	83,662.93

Less deductions not assignable specifically to any one or more of the classes of outlay above stated:

Equipment retired	11,500.00
Depreciation written off	18,734.38

Original Cost to Date

The original cost to date of the common-carrier property of the Chateaugay Railroad at July 24, 1903, cannot be fully ascertained owing to the absence of the accounting records prior to January 1, 1888, and those of the contractor who constructed the original road. Eliminating equipment, the outlay for the roadway property may be summarized as follows:

Recorded money outlay	\$265,233.62
Outlay in notes payable	1,120.14

The Chateaugay Railroad has classified its recorded investment in road and equipment, in its sworn reports to the Railroad Commission of New York, as follows:

Road:

Engineering expenses	\$7,025.30
Land and land damages	5,035.24
Grading, masonry and ballast	84,189.71
Bridges, trestles and culverts	18,026.31
Superstructures, including ties	120,013.29
Passenger and freight stations	9,714.18
Engine and car houses	8,652.07
Changing from narrow to standard gauge.....	13,697.66
Total	<u>266,353.76</u>

Equipment:

Steam locomotives	73,542.10
Passenger-train cars	33,451.50
Freight-train cars	137,132.82
Total	<u>244,126.42</u>
Grand total	<u>510,480.18</u>

[fol. 213]

Leased Railway Property

The Chateaugay Railroad operated under lease the following roads owned by other common carriers:

The Dannemora.—This road, extending from Dannemora to Bluff Point, N. Y., was operated under an agreement dated May 20, 1879, for 100 years from July 1, 1879. The agreement provided a rental of \$1 per year and free transportation of supplies for the prison and of officials traveling on business connected with the Clinton Prison. The agreement also provided for the exemption of all taxes levied by the state of New York.

The Chateaugay Railway.—This road, extending from Lyon Mountain to Saranac Lake N. Y., was operated under an agreement dated July 1, 1888, in perpetuity. The agreement provided that the lessee maintain the property, pay all taxes and also pay the interest on the funded debt, which was 6 per cent on an issue of \$200,000.

The Saranac.—This road, extending from Saranac Lake to Lake Placid, N. Y., was operated under an agreement dated December 19, 1896, for 17 years from January 1, 1897. This agreement provided that the lessee should pay as rental \$7,200 per year, which was the interest at 6 per cent on \$120,000 of its first-mortgage bonds.

The property of the Chateaugay Railroad was leased to the carrier under an agreement dated July 1, 1905, effective from January 1, 1903, to July 24, 1903, when it was consolidated with the Chateaugay Railway and the Saranac to form the Placid.

The Chateaugay Railway Company
(Chateaugay Railway)

Predecessor of the Placid

Introductory

There are no obtainable accounting records of the Chateaugay Railway and the information here submitted has been taken from the articles of association, the sworn reports made to the Railroad Commission of New York, and from the returns of the carrier.

Corporate History

The Chateaugay Railway was incorporated July 13, 1887, under the general laws of New York for the purpose of constructing, operat-

ing and maintaining a narrow gauge railroad from Saranac Lake to Loon Lake, N. Y., and with the authority to purchase from the Chateaugay Ore and Iron Company a narrow gauge railroad already constructed from Loon Lake to Lyon Mountain, N. Y. The Chateaugay Railway was controlled by the Chateaugay Ore and Iron Company through ownership of its entire issue of capital stock.

[fol. 214] Development of Fixed Physical Property

At July 24, 1903, the Chateaugay Railway owned about 36.694 miles of single track, standard gauge, railroad located in the state of New York. Its line of road extends from a connection with the Chateaugay Railroad at Lyon Mountain to a connection with the Saranac at Saranac Lake and thus forms part of the through route from Lake Placid to Bluff Point, a connection with the carrier.

The road from Loon Lake to Lyon Mountain, about 18.100 miles, was acquired from the Chateaugay Ore and Iron Company in 1887. This road was constructed by that company in 1886 for its own use in connection with its mining interests. The road from Loon Lake to Saranac Lake, about 18.594 miles, was acquired by construction in 1887 and 1888, and opened for operation about July 1, 1888.

History of Corporate Financing

The Chateaugay Railway issued capital securities amounting to \$368,000, all of which were outstanding at July 24, 1903. The securities consisted of:

Capital stock	\$168,000
Funded debt	200,000
Total	368,000

Capital Stock, Common.—The authorized capital stock was \$168,000, divided into shares of \$100 each. The entire amount was issued to the Chateaugay Ore and Iron Company for the railroad of that company extending from Loon Lake to Lyon Mountain, N. Y., about 18.100 miles.

Funded Debt.—The funded debt consisted of first-mortgage 20 year, 6 per cent bonds, par value \$200,000, dated August 1, 1887, authorized for the purpose of securing funds with which to construct the railroad from Loon Lake to Saranac Lake. The entire amount was issued at one time to the Chateaugay Ore and Iron Company, and funds for the construction of the railroad were drawn from that company as needed on basis of the par value of the bonds and the accrued interest to the date of sale. It is therefore apparent that the Chateaugay Ore and Iron Company supervised and financed the construction of the road from Saranac Lake to Loon Lake and received these bonds in payment of the advances.

Result of Corporate Operations

Income Account.—The income account of the Chateaugay Railway for the period July 1, 1888, to July 24, 1903, as reported to the Railroad Commission of New York, consisted entirely of income received from lease of road, amounting to \$189,000, and the same amount was disbursed in the payment of interest on funded debt.

Investment in Road and Equipment

The report of the Chateaugay Railway to the Railroad Commission of New York for June 30, 1903, states the investment in road (it [fol. 215] owned no equipment) as \$368,000. This amount is made up as follows:

Road acquired:

Railroad of the Chateaugay Ore and Iron Company from Lyon Mountain to Loon Lake about 18.100 miles. Par value of capital stock issued	\$168,000
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Original construction:

Railroad from Loon Lake to Lake Saranac, about 18.594 miles, par value of funded debt issued.....	200,000
Total	368,000

Original Cost to Date

The original cost of the common-carrier property of the Chateaugay Railway at July 24, 1903, cannot be ascertained with exactness owing to the absence of the accounting records of the Chateaugay Railway, the Chateaugay Ore and Iron Company, and the contractors who constructed the original road. The carrier acquired the entire property of the Chateaugay Railway by lease from January 1, 1903, and immediately began changing the gauge from narrow to standard, which was accomplished for the most part during the year 1903. The expenses for these improvements are included in the outlay for the property of the successor company, the Placid. The obtainable data on the outlay for creating and improving the common-carrier property of the Chateaugay Railway to July 24, 1903, as recorded in the investment in road account, consists of the outlay there stated as capital stock, \$168,000, and funded debt \$200,000.

In its report to the Railroad Commission of New York, the recorded expenditures for the property have been classified as follows:

Road:	Acquired, Loon Lake to Lyon Mountain	Constructed, Saranac Lake to Loon Lake	Total
Engineering expenses	\$7,000	\$5,732	\$12,732
Land and land damages . . . . .	.....	.....	.....
Grading; masonry and ballast	82,840	99,408	182,248
Superstructure, including ties	21,410	25,610	47,020
Rails	50,750	60,900	111,650
Passenger and freight stations	4,500	6,700	11,200
Engine and car houses	1,000	1,200	2,200
Fuel and water stations	500	450	950
Total	168,000	200,000	368,000

Leased Railway Property

The property of the Chateaugay Railway was leased in perpetuity to the Chateaugay Railroad from completion, about July 1, 1888, at an annual rental of the interest on its funded debt, amounting to \$12,000 annually. This lease was terminated January 1, 1903, when [fol. 216] the property was then leased to the carrier under similar arrangements, until July 24, 1903, when the Chateaugay Railway was consolidated and merged with several other companies to form the Placid.

Saranac & Lake Placid Rail Road Company (Saranac)

Predecessor of the Placid

Introductory

The obtainable accounting records of the Saranac were opened at March 17, 1896, and the information here submitted concerning the company was taken from those records, the articles of association, the minutes of meetings of stockholders and directors, reports of Railroad Commissioners of New York, and from the records of the successor company, the Placid.

Corporate History

The Saranac was incorporated June 13, 1890, under the general laws of New York, for a period of 100 years. The purpose of incorporation was to construct, maintain and operate a narrow gauge railroad from Lake Placid to Saranac Lake, N. Y., a distance of about 10.100 miles. The Saranac was consolidated on July 24, 1903, with other companies to form the Placid.

History of Corporate Financing

The Saranac issued securities amounting to \$394,000, all of which were outstanding at its demise. They consisted of:

Capital stock	\$250,000
First-mortgage gold bonds.....	120,000
Second-mortgage gold bonds.....	24,000
Total	394,000

Capital Stock, Common.—The amount of capital stock originally authorized was \$100,000, divided into shares of \$100, each. At April 25, 1893, under authority of the stockholders and the Board of Railroad Commissioners of New York, the capital stock was increased to \$250,000. There are no accounting records for the period of issue of the capital stock, but the reports of Railroad Commissioners of New York for 1890 to 1893 state that \$50,000 of this amount was issued for cash and \$200,000 for construction or property.

Funded Debt.—First-mortgage bonds of a par value of \$120,000 which were authorized for the purpose of securing funds for the construction of the railroad, and were payable in 20 years from May 1, 1893, with interest at six per cent. The interest rate was subsequently reduced to five per cent by agreement with the bondholders and the date of maturity extended to November 1, 1913. The reports of [fol. 217] Railroad Commissioners of New York for 1893 state that the bonds were issued for \$110,000 cash, but there are no records to show what disposition was made of the \$10,000 discount.

Second-mortgage bonds of a par value of \$24,000 were authorized by the Saranac for the purpose of liquidating the floating debt of the company. They were payable in 17 years from November 1, 1896, with interest at five per cent. Of the total issue, \$13,000 was issued in exchange for a like amount of notes payable, and \$11,000 was issued in payment of current liabilities amounting to \$9,697.50. The discount, \$1,302.50, was charged to investment in road and equipment.

Short-term Notes.—The Saranac issued for cash short-term notes for temporary financing amounting to \$36,020.78. This amount was retired by \$23,020.78 cash and \$13,000 second-mortgage bonds.

Cash Advances.—The Saranac received cash advances from E. D. Shipard & Company, bankers, aggregating \$17,684.54, that was carried in open account. E. D. Shipard was a director and took a very active part in the Saranac's affairs. The advances that his company made were liquidated in part by \$10,500 par value of second-mortgage bonds and the balance by cash.

Result of Corporate Operations

Income Account.—The Saranac was operated from January 1, 1897, to January 1, 1903, by the Chateaugay Railroad, and from January 1, 1903, to July 24, 1903, by the carriers. The recorded re-

sults of operations for the period August 1, 1893, to June 30, 1903, are summarized in the following income and profit and loss statements:

Operating income:	
Railway operating revenues.....	\$93,148.89
Railway operating expenses.....	50,253.40
Net revenue from railway operations.....	42,895.49
Railway tax accruals	4,791.61
Railway operating income.....	38,103.88
Nonoperating income:	
Income from lease of road.....	43,048.74
Gross income	81,152.62
Deductions from gross income:	
Interest on funded debt.....	62,033.33
Interest on unfunded debt.....	1,251.41
Maintenance of investment organization.....	2,351.04
Total deductions from gross income.....	65,635.78
Income balance transferred to credit of profit and loss..	15,516.84

Profit and Loss Statement

Credits:	
Credit balance transferred from income.....	\$15,516.84
Debit balance at June 30, 1903.....	1,983.16
Total	17,500.00
[fol. 218] Debits:	
Dividend appropriations of surplus.....	17,500.00
Total	17,500.00

The Saranac paid annual dividends of 3 per cent in 1894 and 2 per cent in 1895 and 1896.

Investment in Road and Equipment

The balance in the investment in road and equipment account at July 24, 1903, was \$358,018.18. This balance was divided \$339,927.56, road, and \$18,090.62, equipment, and is summarized as follows:

Original construction and additions and betterments:

Recorded money outlay	\$156,715.68
Capital stock issued	200,000.00
Total	356,715.68
Other items: Discount on funded debt	1,302.50
Grand total	358,018.18

If the debit in "Other items" not in accord with our present accounting rules be eliminated from the investment in road and equipment account, the balance in that account would be reduced to \$356,715.68.

Original Cost to Date

The original cost of the common-carrier property owned by the Saranac on July 24, 1903, can not be fully ascertained owing to the absence of complete accounting records of the Saranac and those of the contractors who constructed the original road. The obtainable data on the outlay for creating and improving as recorded in the investment in road and equipment account, exclusive of equipment, is as follows:

Recorded money outlay	\$156,715.68
Capital stock issued	200,000.00
Less deductions not assignable specifically to any one or more of the classes of outlay above stated: Equipment	18,090.62

This outlay may include the discount of \$10,000 on the first-mortgage 20-year gold bonds, the disposition of which was not of record.

The Saranac, in its sworn reports to the Railroad Commissioners of New York, has distributed the recorded investment in road and equipment into the following primary accounts:

[fol. 219] Road:

Engineering expenses	\$3,851.32
Land and land damages	21,143.79
Grading, masonry and ballast	1,055.81
Bridges	26.33
Superstructure, including ties	10,309.11
Rails	49,462.44
Fences	662.95
Telegraph and telephone lines	646.45
Passenger and freight stations	5,709.37
Shops, machinery and tools	231.70
Shops, engine houses and turntables	623.33
Road built by contract	231,752.46
Interest and discount charged to construction	14,452.50
Total	339,927.56

Equipment:

Steam locomotives	10,216.62
Passenger cars	7,000.00
Freight and other cars	874.00
Total	18,090.62
Grand total	358,018.18

Investments in Other Companies

The records of the Saranac state its investment in other companies at July 24, 1903, as \$20,000, which consisted of that amount of par value stock of the Transfer Company, an organization at Lake Placid for the transfer of freight and passengers. This stock was acquired under unknown circumstances.

Leased Railway Property

The property of the Saranac was leased for the term of 17 years from January 1, 1897, to the Chateaugay Railroad and the Chateaugay Ore and Iron Company. The lessees agreed to pay as rent a sum of money equal to 35 per cent of the gross receipts received from the operation of the railroad and one-half of the net profits from the operation of the transfer business at Lake Placid, provided, however, that such sum of money shall be at least \$7,200. At January 1, 1903, this lease was assigned to the carrier.

The Plattsburgh and Dannemora Railroad

(The Dannemora)

Introductory

The Dannemora has no accounting or other records, and the information here submitted has been taken from the act authorizing the construction of the railroad and the subsequent acts of 1879 authorizing additional funds for construction purposes, the report of Louis D. Pillsbury, Superintendent of State Prisons, for the year ending September 30, 1879, and from the records of the Comptroller of the state of New York.

[fol. 220] Development of Fixed Physical Property

After the appropriations were made available the Superintendent invited bids for the construction of the railroad, and on June 24, 1878, he made a contract with John O'Brien, who agreed to grade the roadway, build all bridges and trestles, and furnish and lay the ties and iron for the sum of \$73,000. In addition to this sum the Superintendent furnished, as agreed, a number of convicts who

graded about two miles of the roadway nearest to Dannemora. Construction of the road under the contract was begun about June 24, 1878, completed December 30, 1878, and delivered to the Superintendent of Prisons ready for operation. The original appropriation did not provide for the fences along the right of way and the necessary ballasting of the road, which was provided for in the subsequent appropriations, and this work was done after the road had been turned over by the contractor.

Investment in Road and Equipment

The investment in road and equipment, as recorded in the accounts of the Auditor of Prison Accounts, Comptroller's office, state of New York, at date of valuation, was \$183,035.98, and consisted of cash expenditures made by Louis D. Pillsbury, Superintendent of State Prisons in 1878-9, from the appropriations made by the state of New York, under special acts during those years for the purpose of constructing and operating the railroad.

Of the \$192,865.34 provided for the construction of the railroad, \$183,035.98 was recorded in the state records as having been expended for that purpose, and is classified as follows:

Road:

Engineering	\$3,248.15
Right of way	2,487.90
Grading	12,835.50
Track laying and surfacing	2,800.00
Fencing right of way	16,623.00
Crossings and signs	210.00
Station buildings and fixtures	700.00
Water stations	700.00
Shops, engine houses and turntables	13,980.69
Construction by contract	73,000.00
Paying employees	5,000.00
Operating railroad	10,089.00
Lumber, plumbing and painting	665.48
Management and services	7,146.28
Total	149,486.00
Equipment	33,549.98
Grand total	183,035.98

Original Cost to Date

Cost of Lands.—The Dannemora reports the original cost of all lands owned, including both carrier and noncarrier, as \$19,480.63. In verifying the returns, a deduction of \$10,039.34 was made as not constituting land costs. The resulting balance of \$9,441.29, [fol. 221] made up in part of costs supported by accounting records

and in part of substantial deed considerations and other amounts, which the Dannemora claims to represent costs but which are not supported by accounting records, may be classified as follows:

Classification	Costs supported by accounting records	Costs not supported by accounting records
Carrier lands owned and leased to the carrier	\$5,997.39	\$2,659.90
Lands classified as noncarrier; owned ..	.....	200.00
Lands classified as partly carrier and partly noncarrier; owned .....	.....	584.00

Improvements on Leased Railway Property

On January 1, 1903, the carrier leased the property of the Placid and its leased road, the Dannemora, and immediately began changing the entire line of road to standard gauge. At December 31, 1903, there had been expended a total amount of \$2,587,383.63, but the accounting records of the carrier do not show what portion of this amount was expended for improvements to the Dannemora. These changes in the gauge of the Dannemora were authorized by the Superintendent of State Prisons under consents dated August 27, 1902, and February 4, 1904.

Leased Railway Property

As soon as the Dannemora was ready for operation, it was leased to the Chateaugay Railroad, under an agreement dated May 20, 1879, for 100 years from July 1, 1879. The terms of the agreement provided, among other things, that the lessee would construct a railroad from Dannemora to Chateaugay ore mines; would, so far as practicable, maintain a regular train schedule; would maintain and operate the road, renew the equipment and relocate the road, and change the gauge at its own expense when found to be necessary; that it would not charge more than 5 cents per mile for the transportation of passengers to and from Clinton Prison; that it would transport without charge the officers of the prison on official business, and all necessary supplies for the maintenance of the prison, charging only a fair and reasonable rate upon the materials used in the construction or repairing of the prison; and that it would be exempt from the payment of all taxes levied by the state.

[fol. 222]

Abbreviated Names

Adirondack Company	Adirondack Company.
Adirondack Estate and Railroad Company,	
The	Adirondack Estate.
Adirondack Railway Company, The	Adirondack.
Albany Northern Rail Road	Northern.

Albany and Susquehanna Rail Road Company	Albany.
Albany and Vermont Rail Road Company, The	Vermont.
Albany, Vermont and Canada Rail Road Company, The	Canada.
Baltimore Coal and Union Railroad Company	Baltimore.
Chateaugay and Lake Placid Railway Company, The	Placid.
Chateaugay Railroad Company	Chateaugay.
Chateaugay Railway Company, The	Chateaugay Railway.
Cherry Valley, Sharon and Albany Railroad Company, The	Cherry Valley.
Cherry Valley and Mohawk River Railroad Company	Cherry Valley.
Cherry Valley and Spraker's Railroad Company	Cherry Valley.
Cooperstown and Charlotte Valley Rail Road Company, The	Cooperstown.
Delaware and Hudson Canal Company, The President, Managers and Company of the	Carrier.
Delaware and Hudson Company, The	Carrier.
Glens Falls Rail Road Company, The	Glens Falls.
Howard Coal and Iron Company, The	Howard.
Lake Ontario and Hudson River Railroad Company, The	Lake Ontario.
Montreal and Plattsburgh Rail Road Company, The	Montreal.
New York and Canada Railroad Company, The	New York.
New York and Canada Railroad Company, The	New York of 1872.
Northern Coal and Iron Company	Northern.
Plattsburgh and Dannemora Railroad, The	Dannemora.
Plattsburgh & Montreal Rail Road Company, The	Plattsburgh.
Plymouth and Wilkes Barre Rail Road and Bridge Company, The	None.
President, Managers and Company of the Delaware and Hudson Canal Company, The	Carrier.
Rensselaer and Saratoga Rail Road Company, The	Rensselaer.
Rutland and Washington Rail-Road Company, The	Rutland.
Rutland and Whitehall Rail Road Comapny	Ruthall.
Sackets Harbor and Saratoga Railroad Company	Lake Ontario.
Salem and Rutland Railroad Company, The	None.
Saranac and Lake Placid Rail Road Company	Saranac.

Saratoga and Fort Edward Rail Road Company, The	None.
Saratoga and Schenectady Rail Road Company, The	Saratoga.
Saratoga and Washington Rail-road Company, The	Washington.
Saratoga & Whitehall Rail Road Company, The	Whitehall.
Schenectady and Duanesburgh Railroad Company	Duanesburgh.
Schenectady & Susquehanna Rail Road Company, The	Schenectady.
Ticonderoga Railroad Company, The	Ticonderoga.
Troy & Rutland Rail-road Company	Troy.
Troy, Salem & Rutland Rail Road Company, The	Salem.
Union Coal Company, The	Union.
Whitehall and Plattsburgh Rail Road Company, The	Whitehall.

[fol. 223]

APPENDIX 3

Analysis of Methods for Determining Working Capital

Working capital is understood to include two parts: First, the investment in a stock of material and supplies and, Second, the cash necessary to pay the operating expenses incurred for common-carrier service prior to the time when the revenues from that service are available.

Considering that the revenues from service performed in any particular period lag behind the expenses incurred for the service within that particular period, the amount of cash working capital needed for operating purposes is the amount by which the matured operating expenses exceed that part of the accrued revenues applicable to operating expenses, which has been collected, has reached the treasury and has become available for paying bills.

It is immaterial whether this fund of working capital is provided by the owners, or secured in part on occasion through bank loans, or in part by impounding that portion of maturing revenues which is applicable as a return on the property.

A practicable way to determine the portion of expenses for service in any period that exceeds maturing revenues from such service will be to consider that, of all operating expenses for service in any period, there will be met from maturing revenues from that service a proportion that is equal to the proportion of all accrued revenues from service within the period that reaches the treasury within that period. The remaining proportion of operating expenses will be the measure of the cash working capital actually used.

Consideration was given to the various factors in this relation be-

tween the available revenues and the expenses within any period. Also, consideration has been given to the requirements in the way of a stock of material and supplies. The factors affecting cash working capital are as follows: the relative amount of revenue from the various classes of service; the elapsed time from the beginning of such service to the receipt in the treasury of the revenues for the service, including, for prepaid freight, the time for movement of empty cars to the point of loading, the time consumed in loading and the time the receipts are in transit to the treasury, and, for C. O. D. freight, in addition, the time for movement under load, the time consumed in unloading and the credit period for payment of charges; the relative amount of operating expenses for various purposes; and the elapsed time from the beginning of the accrual of such respective expenses to the time when they must be paid. The factors in most cases represent the experience of all Class I carriers and in a few cases consist of specially assembled data from the experience of territorially scattered carriers that represent over 40 per cent of the operating expenses of all Class I carriers. For material and supplies, consideration has been given to the average book value of the stock carried by all Class I and Class II carriers on June 30, for the years 1914-1916, and to the fact that some part of this stock is held for additions and betterments and new construction and that some part represents more or less obsolete material. Considering these facts and reducing these data to an equivalent percentage of a year's operating expenses, the result indicates that the average requirements of carriers for operating working capital, including cash on hand and investment in a stock of material and supplies, is about 13.6 per cent of a year's operating expenses. But, since operating expenses for the year ended on date of valuation may be more or less than normal, the expenses for a period, usually five years, preceding date of valuation, have been taken to determine the normal annual expenses as of date of valuation.

[fol. 224] In determining working capital for individual roads, consideration is given, so far as data obtainable from reports on file with the Commission apply, to the difference between the factors applicable to those roads and the average of factors applicable to all roads as a whole, as hereinbefore mentioned. These differences are in respect to the relative amount of revenues from passenger and freight service, and the average haul of freight and the ratio between empty and loaded car movement in their effect upon the elapsed time before the revenues from each class of service are in hand.

Under the law, only such cash and material and supplies as are used for common-carrier purposes may be included in the value found for common-carrier property. Since the above method reveals the amount actually so used, the remainder of such assets that may happen to be in hand because of various causes other than those lying in the performance of common-carrier service must be considered for the purpose of valuation as "held for purposes other than those of a common carrier".

If the amount of cash and material and supplies held on date of valuation is less than the amount determined by the above method, due to assistance from affiliated companies or to other special circumstances, the carrier's common-carrier property of that kind cannot, of course, be greater than the amount actually on hand. In such cases, the value found for working capital is that for the cash and material and supplies.

This method does not lend itself to the determination of working capital for switching and terminal companies, whose operations and methods of financing them are unlike the operations and revenues therefrom of line haul carriers. Therefore, some other method will be used in such cases.

[fol. 225] DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ORDER TO SHOW CAUSE—Filed November 1, 1923

Whereas, in the above entitled suit it has been made to appear from the verified petition presented to the undersigned, a District Judge of the United States for the Southern District of New York, [fol. 226] that petitioners therein are entitled to an interlocutory injunction suspending and restraining the enforcement, operation and execution of, and setting aside a certain order made by the Interstate Commerce Commission as of the date of March 28, 1922, as set forth in said petition.

It is ordered, that the respondent herein, The United States of America, appear before the Honorable Charles M. Hough, United States Circuit Judge for the Second Circuit, and the Honorable Learned Hand, United States District Judge for the Southern District of New York, and the undersigned, said judges having been called by the undersigned to his assistance to hear and determine said petition in accordance with the provisions of the Urgent Deficiency Appropriation Act of October 22, 1913, at United States Court and Post Office Building, Room 235, in the City of New York, on the 28th day of June, 1923, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, and then and there show cause before said Court and judges so convoked or so called together why the interlocutory injunction prayed for in said petition should not issue, and it is further

Ordered, that a copy of this order with the petition attached thereto [fol. 227] be served upon the Attorney General of the United States and upon the Secretary of the Interstate Commerce Commission at least five days before said 28th day of June, 1923, as by said statute made and provided.

(Signed) Jno. C. Knox, United States District Judge for the Southern District of New York. Dated New York City, New York, this 14th day of June, 1923.

[File endorsement omitted.]

[fol. 228] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

INTERVENTION OF INTERSTATE COMMERCE COMMISSION—Filed June
28, 1923

To the Honorable the Judges of said Court:

In accordance with the provisions of Section 212 of the Judicial Code, 36 Stat. L. 1150, I hereby enter the appearance of the Interstate Commerce Commission, as a party respondent, and of myself as its counsel, in the above-entitled suit.

P. J. Farrell, for Interstate Commerce Commission.

[File endorsement omitted.]

[fol. 229] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

MOTION TO DISMISS—Filed June 28, 1923

Comes now the United States of America, defendant in the above entitled case, and moves the court to dismiss the petition herein on the following grounds:

1. The facts set forth in the petition are not sufficient to entitle petitioners to the relief prayed for, or to any relief in equity.

2. To grant the relief prayed for would constitute an invasion by the court of the jurisdiction of the Interstate Commerce Commission in a matter committed by Congress solely to it, and now pending before it.

3. The suit is premature since it appears from the petition that the order of the Interstate Commerce Commission complained of is interlocutory and not final.

[fol. 230] 4. The petitioners have neither invoked nor exhausted their remedy before the Interstate Commerce Commission.

United States of America, by W. D. Riter, Assistant Attorney General.

[File endorsement omitted.]

[fol. 231]

[Title omitted]

[fol. 232] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

MOTION TO DISMISS—Filed June 28, 1923

Now comes the Interstate Commerce Commission, intervening respondent in the above-entitled suit, hereinafter called the commission, and moves the court to dismiss the petition upon the grounds that—

1. The court has no jurisdiction over the subject matter of the petition and may not properly grant the relief or any of the relief asked for in and by the petition.

2. There is no equity in the petition.

3. The petition shows that the suit is not one instituted to enjoin, set aside, annul, or suspend an order of the commission, within the meaning of the urgent deficiency appropriations act of October [fol. 232¹/₂] 22, 1913, referred to in Paragraph II of the petition.

4. The petition shows that the commission's order of March 28, 1923, referred to in Paragraph V of the petition, is an interlocutory order over which the court may not properly exercise jurisdiction.

5. The petition shows that each of the valuations covered by the order is a tentative valuation only, over which the court may not properly exercise jurisdiction.

6. The petition shows that, if no protests have been filed in the office of the commission against the tentative valuations covered by the order, the valuations have become final by operation of law.

7. The petition shows that, if protests have been filed in the office of the commission against the tentative valuations covered by the order, the matters included in the protests are now before the commission for hearing and determination and may not properly be reviewed in court until after they have been determined by the commission in accordance with the duties imposed and the authority conferred upon it in and by section 19a of the interstate commerce act.

8. The petition shows that, in making and serving upon the petitioners the tentative valuations covered by the order of March 28, the commission acted in the capacity of an appraiser only, and has [fol. 233] not as yet had an opportunity to hear and determine any matter covered by any protest, the filing of which in the commission's office is provided for in and by said section 19a.

9. The petition does not show that petitioners, or any of them, will suffer legal injury or be harmed in any way if the relief asked for in and by the petition is not granted by the court.

Wherefore, the commission prays that the petition be dismissed.

P. J. Farrell, for Interstate Commerce Commission, Intervening Respondent.

[fol. 234] UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF
NEW YORK

[Title omitted]

STENOGRAPHIC MINUTES OF HEARING BEFORE HONORABLE CHARLES
M. HOUGH, HONORABLE JOHN C. KNOX, AND HONORABLE HENRY
W. GODDARD, JUNE 28, 1923—Filed November 1, 1923

Mr. Newcomb: If the Court please, there is a reference in the order which we are contesting to the decision of the Commission in the Texas-Midland case in these words: "Reference is made to appendix [fol. 235] 3 of the report in Texas-Midland Railroad on valuation reports 108, which is hereby made a part hereof for a statement of the methods employed, and for the reasons in the difference of the various cost matters reported." That is an official report in the decisions of the Interstate Commerce Commission, but it is a little difficult to get and I have here half a dozen copies which perhaps may be of convenience.

Judge Hough: I have here but one copy of the motion to dismiss. There should be three. I think we ought also to be furnished with copies of the bill. Are there other copies of the Motion to dismiss?

Mr. Farrell: On behalf of the United States, I will have to supply additional copies later, your Honor.

Judge Hough: Go on.

Mr. Newcomb: I offer an affidavit of H. E. Hale in support of the motion, additional copies of that; also affidavit of George H. Burgess, in support of the motion.

* * * * *

Judge Hough: Within thirty days, did the Corporation file a protest with the Commission?

Mr. Newcomb: Yes, your Honor, a protest was filed within the time prescribed by the Commission.

Judge Hough: Has the Commission fixed a time for hearing?

Mr. Newcomb. It has not. I think, perhaps, I should offer the protest and suggest that it be made a part of the record.

Judge Hough: You may do so.

* * * * *

[fol. 236] Judge Hough: Having now looked into the framework of your petition on both of your charges of illegality in this tentative report, now the tentative report is, I take it—correct me if I am wrong—valuation docket No. 328?

Mr. Newcomb: Yes, your Honor.

Judge Hough: I do not appear to have a copy, although it is called an exhibit and made a part of this petition.

Mr. Newcomb: There is a copy attached to the original on file, and we have additional copies.

Judge Hough: I should like very much to have it.

Mr. Newcomb: The original is in the Clerk's Office, but I can supply three copies. There are 195 pages in that document, but not quite enough. I can furnish additional copies of it is desired.

Judge: Yes, it is.

(Three copies handed to the Court.)

[File endorsement omitted.]

[fol. 237] DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

STATE, COUNTY, AND CITY OF NEW YORK, ss:

AFFIDAVIT OF H. E. HALE—Filed July 16, 1923

[fol. 238] H. E. Hale, being duly sworn according to law, deposes and says:

1. That he is a resident of the Borough of Manhattan, in the City, County and State of New York, and for nine years past has been employed and is now employed as Group Engineer of the Eastern Group of the Presidents' Conference Committee on valuation and has his principal place of business at No. 32 Nassau Street, in the city of New York.

2. That the Presidents' Conference Committee is a Committee consisting of 20 presidents of various railroads, organized and existing for the purpose of cooperating with the Interstate Commerce Commission in the Federal valuation of the railroads of the United States, as called for in the Valuation Act of 1913.

3. He further states that he spent three years at Lehigh University studying their Civil Engineering course; that he started his engineering work on the Engineering corps of the Pennsylvania Railroad, making preliminary survey of a line from Curwensville to Du Bois, Pa. After that, he held various positions on the engineer-

ing corps and was finally in charge of a survey party in the field. After that he held positions on the Pennsylvania Railroad as follows:

Assistant on Engineering Corps, West Philadelphia.

Assistant Engineer at Altoona.

Asst. Supervisor of Signals at Jersey City.

Supervisor of Signals at Camden, N. J.

On the Baltimore & Ohio, he was Division Engineer on the Philadelphia Division; later on the Baltimore Division; Superintendent of the Butler Division; Engineer of Maintenance of Way of the Main Line District from Philadelphia to Parkersburg, W. Va.

On the Missouri Pacific he was Assistant Engineer, Engineer of Design, Principal Assistant Engineer of the System, and Engineer Maintenance of Way of the Southern District.

[fol. 239] 4. He further states that he is a member of the American Railway Engineering Association and the American Society of Civil Engineers, and is a member of the Committee appointed by the Presidents' Conference Committee to study the subject of change in prices.

5. He further states that since the beginning of his railroad experience and during the entire time, he has constantly been in touch with all sorts of railroad construction and has not only made estimates of the cost of the work, but has had charge of constructing the projects and comparing the actual cost with estimates, so that the question of cost of construction work was constantly being discussed and considered.

6. Some eight years ago, under his direction, there was collected information showing the range of prices of various commodities and costs during a series of years. During this study, particular attention was given to the range of prices, which is indicated by the all-commodity trend line or index number as issued by the Bureau of Labor Statistics of the United States Government.

This Bureau of Labor Statistics index number is based on the prices of a large number of commodities, beginning in 1860 with approximately 125 commodities. At the present time, the index number is based on over 400 commodities. These commodities are divided into nine groups, such as farm products, food, clothing, metal and metal products, lumber and building material, etc. A full description of the method of computing the index number is given in "Bulletin No. 320, Wholesale Prices 1890 to 1921," dated December 1922, beginning on page 7, published by the United States Department of Labor, Bureau of Labor Statistics.

7. He further states that he first had charge of making estimates of construction costs when he was Assistant Engineer in West Philadelphia on the Pennsylvania Railroad and following that when he was Assistant Engineer in the Altoona office; that he first had charge of construction work in the field as Assistant Supervisor of Signals [fol. 240] with headquarters at Jersey City.

8. He further states that the all-commodity trend line of the Bureau of Labor Statistics adheres closely to the trend of cost of railroad construction on the average. This opinion was formed by a comparison of the simple average of the cost of 13 railroad commodities in common use, such as cast iron pipe, timber piling, undressed lumber, wrought iron and steel pipe, rails, angle bars, track spikes, etc.

9. In addition to this, very reliable costs were obtained of the cost of a number of railroad structures from 1890 to 1919 and 1920, such as concrete culverts, frame trestles, pile trestles, frame station pagodas, one story frame combination, one story frame freight station, frame section houses, brick engine houses, etc. The change in cost of construction of these buildings varied almost identically with the all-commodity line or index number of the Bureau of Labor Statistics.

He further states that these very studies and his personal acquaintance with construction costs led him to believe that the trend of prices of railroad construction varies very closely with the all-commodity trend line or index number of the Bureau of Labor Statistics.

10. He further states that the increase in cost of purchasing material and labor comparing 1916 with 1914, as indicated by these index numbers from 1914 to 1916, was thirty (30) per cent.

(a) Bureau of Labor Statistics, U. S. Department of Labor all-commodity index number increased..... 30%

11. He further states that as a general proposition and from his studies the cost of railroad construction varied between 1914 and 1916 in about the same ratio as the Bureau of Labor Statistics index numbers varied being very materially higher in 1916 than in 1914, or about 30% higher.

12. He further states that these increases apply to the estimates of the cost to reproduce the railroad of the Delaware & Hudson Com-[fol. 241] pany in 1914 and 1916 as the material and labor to build such a railroad would be obtained from the regular markets in the United States, such as Pittsburgh for steel bridges, New York for Labor supply, etc.

(Signed)

H. E. Hale.

Subscribed and sworn to before me this 27th day of June, 1923. (Signed) Bernard Schulhaus, Notary Public. Notary Public, N. Y. County. N. Y. Co. Clerk's No. 129. Reg. 5113. My commission expires Mar. 30, 1925. (Notarial Seal.)

[File endorsement omitted.]

[fol. 242] DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

STATE OF NEW YORK,
County of Albany, ss:

AFFIDAVIT OF GEORGE H. BURGESS—Filed July 16, 1923

George H. Burgess, being duly sworn according to law, deposes and [fol. 243] says:

1. That he is a resident of the City of Albany, in the State of New York, and since November 10, 1913, has been employed as Chairman of the Valuation Committee of The Delaware and Hudson Company and in that capacity has had direct charge and supervision of all relations with the Interstate Commerce Commission and the Bureau of Valuation of said Commission in all matters growing out of Section 19a of the Interstate Commerce Act.

2. Prior to said November 10, 1913, and from and after May 1, 1909, affiant was Chief Engineer of said The Delaware and Hudson Company, having charge of all maintenance of way and construction work upon the railroad operated by said company. For many years prior to May 1, 1909, affiant had performed similar duties and had charge of similar work upon other railroad properties. Affiant is a civil engineer. Affiant has for many years been familiar with and is now familiar with methods of constructing railroads and railway property and with railroad construction and with the prices of materials and supplies and the wages and cost of labor entering into such construction.

3. Affiant has made a thorough examination of the order of the Interstate Commerce Commission and Division 1 thereof, entered on March 28, 1923, in the proceeding known as Valuation Docket No. 328, purporting to establish tentative valuations, and said order [fol. 244] does not show or report the original cost to date of each piece of property owned or used by said The Delaware and Hudson Company for its purposes as a common carrier, but shows such original cost to date in an aggregate only as to certain pieces of property as to which said Commission considered that such original cost to date was established by obtainable records. Said Commission has at all times refused and continues to refuse to accept or to consider competent evidence, other than record evidence, as to original cost to date of other or any pieces of property owned or used by said company for its purposes as a common carrier. Said The Delaware and Hudson Company is ready and willing, and affiant is ready and willing, and have at all times been ready and willing, to produce before said Commission competent evidence, other than record evidence, of the original cost to date of each and every piece of property so owned or used.

4. Said order does not show or report the original cost in detail and separately from improvements, of lands, rights of way, and terminals owned or used by said The Delaware and Hudson Company for its common carrier purposes, but reports said original cost in aggregates only, and only as to portions of such property and only to the extent that said Commission considered that such original cost was established by accounting records. Said The Delaware and Hudson Company is ready and willing and affiant is ready and [fol. 245] willing and have at all times been ready and willing to prove the original cost of all said land, rights of way, and terminals, in detail and separately from improvements, by competent evidence other than record evidence, but said Commission always refused and continues to refuse to receive such testimony.

5. Said The Delaware and Hudson Company used for its purposes as a common carrier, on June 30, 1916, under contract with Erie Railroad Company, and has continuously used since long prior to January 1, 1898, a portion of double track railroad between Carbon-dale, Pennsylvania, and Jefferson Junction, Pennsylvania, more than thirty-five miles in length, which portion of railroad is also used by said Erie Railroad Company, but said order does not contain the inventory of said portion of railroad, or the pieces of property by which it is constituted or any of them, and does not show the original cost to date of said portion of railroad or the cost of reproduction new thereof, or the cost of reproduction less depreciation thereof, or the other values and elements of value thereof. Said The Delaware and Hudson Company is ready and willing and affiant is ready and willing, and have at all times been ready and willing, to prove the facts with regard to said portion of railroad by competent evidence, but said Commission has refused and continues to refuse to receive such evidence.

6. Said The Delaware and Hudson Company used, on June 30, 1916, for its purposes as a common carrier various and sundry [fol. 246] railroad property and pieces of such property, including railroad property between Troy, New York, and Eagle Bridge, New York; between Mechanicsville, New York, and Eagle Bridge, New York; between Crescent, New York, and Coons, New York; between Coons, New York, and the west end of Mechanicsville, New York; between Hudson, Pennsylvania, and Union Junction, Pennsylvania; between Binghamton, New York, and Owego, New York; between South-Wilkes-Barre, Pennsylvania, and Wilkes-Barre, Pennsylvania; between Buttonwood, Pennsylvania, and Hudson, Pennsylvania, and in the City of Troy, New York, and other railroad properties and pieces of such property, all which were used jointly with other carriers, and said order contains no inventory of any of said property or pieces of property and no report of the original cost to date thereof or the cost of reproduction new thereof, or of the cost of reproduction less depreciation thereof, or the other values and elements of value thereof. Said The Delaware and Hudson Company is ready and willing and affiant is ready and willing, and have at all times been ready and willing, to prove the facts con-

cerning such property and pieces of property by competent evidence, but said Commission has refused and continues to refuse to receive said evidence.

7. Said order purports to establish tentative valuations as of June 30, 1916. All property referred to and inventoried therein is described and referred to and inventoried as of said June 30, 1916, but the prices applied to all the respective units of said property, in [fol. 247] estimating the cost of reproduction new thereof and the cost of reproduction less depreciation thereof, are not the prices which actually existed and were current on said June 30, 1916, or at any time during said 1916, and do not purport to be the prices of said date or year, but purport to be prices ascertained for a period of years ending with June 30, 1914, and are in all cases materially lower than the prices which actually prevailed on said June 30, 1916, and during the year that ended on said June 30, 1916. Affiant is familiar with the prices of materials and supplies used in railroad construction and the wages of labor employed in such construction which prevails during 1914 and on June 30, 1914, and during 1916 and on June 30, 1916, and the general average of the prices and wages of June 30, 1916, and said year 1916 was not less than twenty per cent greater than the general average of the prices and wages prevailing on June 30, 1914, and during said year 1914. Affiant is of the opinion that the reproduction of railroad property of said The Delaware and Hudson Company on said June 30, 1916, or during the year 1916, would have required the payment of prices for materials and wages for labor averaging not less than twenty per cent more than the prices used in said order.

(Signed) George H. Burgess.

Subscribed and sworn to before me this 23rd day of June, 1923. (Signed) Edward H. Clark, Notary Public. My Commission expires March 30, 1925. (Seal.)

[File endorsement omitted.]

[fol. 248]

[Title omitted]

[fol. 249]

EXHIBIT IN EVIDENCE

BEFORE THE INTERSTATE COMMERCE COMMISSION

Valuation Docket No. 328

THE DELAWARE AND HUDSON COMPANY; THE ALBANY AND SUSQUEHANNA Rail Road Company, The Rensselaer and Saratoga Rail Road Company, Albany and Vermont Rail Road Company, Rutland and Whitehall Rail Road Company, Saratoga and Schenectady Rail Road Company, Northern Coal and Iron Company, The Ticonderoga Railroad Company, The Chateaugay and Lake Placid Railway Company, and The Plattsburgh and Dannemora Railroad.

Protest

To the Interstate Commerce Commission:

The Delaware and Hudson Company; The Albany and Susquehanna Rail Road Company; The Rensselaer and Saratoga Rail Road Company; Albany and Vermont Rail Road Company; Rutland and Whitehall Rail Road Company; Saratoga and Schenectady Rail Road Company; Northern Coal and Iron Company; The Ticonderoga Railroad Company; The Chateaugay and Lake Placid Railway Company, and the Plattsburgh and Dannemora Railroad; and each of them; within thirty days from April 12, 1923, hereby make and file this their protest against and to the order in the above entitled proceeding, and every part thereof, including any document or documents or other matter or matters that may be held or considered to have been made part thereof by any reference therein contained; which said order was entered at a session of the Interstate Commerce Commission, Division I, held at its office in Washington on March 28, 1923, and purports to make a tentative valuation or tentative valuations, as of June 30, 1916, of the properties owned or used by the protestants.

And protestants respectfully represent and state that; by reason of the omission of property and physical property and pieces of such property, owned or used by protestants, or one or more of protestants, on said June 30, 1916; and by reason of the form and manner of its preparation, the erroneous rules, methods and principles employed therein, the errors and omissions in its report of the facts and in the conclusions drawn therefrom; said order is not, and does not contain or establish, a tentative valuation, within the meaning of Section 19a of the Interstate Commerce Act, as amended, and does not comply with said Act; and protest is hereby made against considering or treating said order, for any purpose, as though it contained or established any such tentative valuation, and against any proceeding or conclusion based thereon as though said order contained or established any tentative valuation, and especially

against any proceeding or order based upon said order, or upon any such proceeding, or any conclusion intended or purporting to determine or fix any final tentative valuation or any final valuation in respect of the properties, or any of the properties, of these protestants.

And, without waiving any rights arising from said errors and omissions, or any of them, but insisting upon all such rights and expressly reserving the right to take any steps, including any proceeding in law or equity, as they may be advised, for the protection of their said rights, or any of them, protestants further protest as follows and herein set forth in detail the particular things in said order against which their protest, and further protest, is directed.

I. The Interstate Commerce Commission has not, in said order, and in respect of the properties and physical properties and pieces of property owned or used on said June 30, 1916, by protestants, or by one or more of them, complied with those portions of said Section 19a which are as follows:

"First. Said Commission shall ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several [fol. 252] costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values.

"Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purpose of a common carrier, and ascertain as of the time of dedication to the public use, and the present value of the same.

"Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

"Fifth. * * * (c) * * * such investigation shall show the value of the property of every common carrier as a whole and separately the value of its property in each of the several States and Territories and the District of Columbia, classified and in detail as herein required."

II. And protestants represent and protest that said Commission has failed and omitted to comply with said provisions of said Section 19a in the following particulars, that is to say:

[fol. 253] 1. Protestant, The Delaware and Hudson Company, used on said June 30, 1916, and still uses, for its purposes as a common carrier and as a part of the main line of the system of railroads

operated by said protestant; a certain double-tracked railroad or portion of railroad, about 35.01 miles in length, together with lands, rights-of-way, tracks, side tracks, stations, structures, signaling apparatus and all other appurtenances, except equipment, commonly a part of any railroad, between Carlisle and Jefferson Junction, both in the State of Pennsylvania; which said railroad or portion of railroad is owned by Erie Railroad Company and used by said protestant under a certain agreement duly made and entered into, on or about January 1, 1898, under which said protestant is entitled to use said railroad or portion of railroad, jointly with said Erie Railroad Company, throughout a period of one hundred years from said January 1, 1898. Said railroad or portion of railroad is listed on page 89 of Appendix 2 of said order but, except as listed on said page 89, said railroad or portion of railroad is wholly omitted and excluded from said order and from all amounts and figures representing or purporting to represent values which are contained in said order.

2. Protestant, The Delaware and Hudson Company, used on said June 30, 1916, and still uses, for its purposes as a common carrier and as parts of the system of railroads operated by said protestant; all those pieces of property and physical property, in addition to the railroad referred to in the next foregoing paragraph, listed on page 89 of said Appendix 2, and stated on said page to be properties of other companies the use of which has been granted to said protestant, as follows:

[fol. 254] Name of grantor	Between—	State	Miles
Boston and Maine Railroad.....	Troy and Eagle Bridge..	N. Y..	22.04
	Mechanicville and Eagle Bridge	N. Y..	19.43
	Crescent and Coons.....	N. Y..	6.80
	Coons and West End Mechanicville	N. Y..	1.90
The Central Railroad Company of New Jersey.....	Hudson and Union Junction	Penn..	1.34
Erie Railroad Company.....	Binghamton and Owego.	N. Y..	22.00
Lehigh Valley Railroad Company....	South Wilkes-Barre and Wilkes-Barre	Penn..	1.62
The Troy Union Railroad Company..	In the City of Troy.....	N. Y..	2.03
Wilkes-Barre Connecting Railroad Company.	Burtonwood and Hudson.	Penn..	5.04

Said properties are listed on page 89 of said Appendix 2, but, except as listed on said page 89, said properties are wholly omitted and excluded from said order and from all amounts and figures representing or purporting to represent values which are contained in said order.

3. Protestant, The Delaware and Hudson Company, used on said June 30, 1916, and still uses, for its purposes as a common carrier, and as parts of the system of railroads operated by said protestant; certain passenger stations, and passenger stations and adjacent and accessory tracks, located in the cities of Wilkes-Barre, Pennsylvania; Binghamton, New York; Albany, New York; Schenectady, New

York; Troy, New York; Voorheesville, New York; Eagle Bridge, New York; Fort Ticonderoga, New York; Rutland, Vermont, and Center Rutland, Vermont, which said stations are owned by sundry other corporations, but none of said passenger stations, or passenger [fol. 255] stations and adjacent and accessory tracks, are anywhere listed or referred to in said order, but all said passenger stations, and passenger stations and adjacent and accessory tracks, are wholly omitted and excluded from said order and from all amounts and figures representing or purporting to represent values which are contained in said order.

4. Protestant, The Delaware and Hudson Company owned and used, on said June 30, 1916, and still owns and uses for its purposes as a common carrier, and as parts of the system of railroad operated by said protestant; certain crossings of said railroad and the railroad operated by The New York Central Railroad Company, that is to say, two certain bridges or overhead structures, located in or near the City of Schenectady, New York, by which the railroad of said The New York Central Railroad Company is operated over the railroad of said protestant; but neither of said bridges or overhead structures is anywhere listed or referred to in said order, and both said bridges or overhead structures are wholly omitted and excluded from said order and from all amounts and figures representing or purporting to represent values which are contained in said order.

5. The protestant, The Albany and Vermont Railroad Company owned, on said June 30, 1916, and protestant, The Delaware and Hudson Company used for its purposes as a common carrier, as part of the system of railroads operated by said protestant on June 30, 1916, the certain bridge or overhead structure located at or near the City of Watervliet, New York, by which the railroad operated by [fol. 255] said The New York Central Railroad Company is operated over and across the railroad of said respondents, and said respondents still own and use, as aforesaid, said bridge or overhead structure, but said bridge or overhead structure is not anywhere listed or referred to in said order, but is wholly omitted and excluded from said order and from all amounts and figures representing or purporting to represent values which are contained in said order.

6. The protestant, The Rensselaer and Saratoga Railroad Company owned, on said June 30, 1916, and protestant, The Delaware and Hudson Company used for its purposes as a common carrier, as part of the system of railroads operated by said protestant on June 30, 1916, the certain bridge or overhead structure, located at or near the Village of Green Island, New York, by which the railroad operated by said The New York Central Railroad Company is operated over and across the railroad of said respondents, and said respondents still own and use, as aforesaid, said bridge or overhead structure, but said bridge or overhead structure is not anywhere listed or referred to in said order, but is wholly omitted and excluded from said order and from all amounts and figures representing or purporting to represent values which are contained in said order.

7. Protestant, The Albany and Vermont Railroad Company owned, on said June 30, 1916, and protestants, The Delaware and Hudson Company used for its purposes as a common carrier, and as part of the system of railroads operated by said protestant on June 30, 1916, a bridge, located at or near West Waterford, New York. [fol. 257] crossing the Barge Canal owned by the State of New York, and said protestants still own and use, as aforesaid, said bridge, but said bridge is not anywhere listed or referred to in said order, but is wholly omitted and excluded from said order and from all amounts and figures representing or purporting to represent values which are contained in said order.

8. Protestant, The Rensselaer and Saratoga Railroad Company owned, on said June 30, 1916, and protestant, The Delaware and Hudson Company used for its purposes as a common carrier, and as part of the system of railroads operated by said protestant on June 30, 1916, a bridge at or near Whitehall, New York, crossing the Barge Canal owned by the State of New York, and said protestants still own and use, as aforesaid, said bridge, but said bridge is not anywhere listed or referred to in said order, but is wholly omitted and excluded from said order and from all amounts and figures representing or purporting to represent values which are contained in said order.

9. Protestant, The Delaware and Hudson Company, owned and used, on said June 30, 1916, for its purposes as a common carrier, and as part of the system of railroads operated by said protestant, a certain passenger-train car, which said passenger-train car is represented by certain figures on pages 8 and 57 of said order, but the value of said passenger train car is wholly omitted and excluded from all amounts and figures representing or purporting to represent values of property used on said June 30, 1916, by said protestant, for its purposes as a common carrier as aforesaid, which are contained in said order.

[fol. 258] 10. Protestants, and one or more of protestants, owned, on said June 30, 1916, and protestant, The Delaware and Hudson Company used, on said June 30, 1916, for its purposes as a common carrier, and as parts of the system of railroads operated by said protestant, various and sundry other property and physical property and pieces of property, none of which said property and pieces of property is anywhere listed or referred to in said order, but all said property and pieces of property are wholly omitted and excluded from said order and from all amounts and figures representing or purporting to represent values which are contained in said order.

III. And protestants represent and protest that said Commission has failed and omitted to comply with said provisions of said Section 19a and has omitted and failed to ascertain and report in detail as to each piece of property owned or used by the protestants, or one or more of them, for common carrier purposes, the original cost thereof to date, and said order does not report or show the original cost to date of the property of protestants, or any of them, as a

whole, and does not report or show the original cost to date of a very large number, being nearly all, the property and physical property and pieces of property, owned or used by protestants, or one or more of them, and all figures and amounts contained in said order which purport to report or represent the value of property or physical property or pieces of property, as a whole or separately and in detail, are arbitrary estimates, or estimates based upon data which do not include the original cost to date of the properties of protestants, or [fol. 259] any of them, as a whole, or the original cost to date of those certain pieces of property as to which original cost to date was not ascertained or reported.

IV. And protestants represent and protest that said Commission has failed and omitted to comply with said provisions of said Section 19a and has omitted and failed to state or report or to include in said order, an analysis of the methods by which the several costs therein reported, or to the extent that they are therein reported, were obtained.

V. And protestants represent and protest that said Commission has failed and omitted to comply with said provisions of said Section 19a and has omitted and failed to state or report or include in said order or in any manner or form to disclose the reason, or reasons, for the differences between the several costs reported, to the extent that they are reported, and has not reported or included in said order any analysis of such reason or reasons.

VI. And protestants represent and protest that said Commission has failed and omitted to comply with said provisions of said Section 19a and has omitted and failed to ascertain, or to report, separately or otherwise, or to show or include in said order, any figures, amounts or values, representing or purporting to be or to represent any "other [fol. 260] values and elements of value," within the intendments of the paragraph entitled "First" of said section, and has wholly failed and omitted to report or to include in said order, or in any manner or form to disclose, "an analysis of the methods of valuation employed, and the reasons for any differences between any such value and each of the foregoing cost values," as required by the concluding sentence of said paragraph entitled "First."

VII. And protestants represent and protest that said Commission has failed and omitted to comply with said provisions of said Section 19a and has omitted and failed to state or to report or to include in said order, in detail and separately from improvement or otherwise, any figures, amounts or values representing, or purporting to represent, the original cost of all, or any, lands, rights of way, and terminals, owned or used for the purpose of a common carrier, by these protestants, or one or more of them, and ascertained as of the time of dedication to public use.

VIII. And protestants represent and protest that said Commission has failed and omitted to comply with said provisions of said Section 19a and has omitted and failed to show or to report or to include in

said order, separately or otherwise, any amounts, figures or values, representing or purporting to represent, the property held for purposes other than those of a common carrier, by these protestants, or one or more of them, or the original cost or the present value of the same, [fol. 261] or to report or to include in said order, or in any form or manner to disclose, any analysis of the methods of valuation employed with respect to any property so held for purposes other than those of a common carrier.

IX. And protestants represent and protest that said Commission has failed and omitted to comply with said provisions of said Section 19a and has omitted and failed to ascertain, or to show or report, or to include in said order, any figure, amount or value, representing or purporting to represent, the value of all the property, or the value of the property as a whole, owned or used by these protestants, or any one or more of them.

X. And protestants represent and protest that said Commission has failed and omitted to comply with said provisions of said Section 19a and has omitted and failed to show, or to report, or to include in said order, any figure, amount or value, or any figures, amounts or values, representing or purporting to represent, separately, the value of the property of protestants, or any one or more of them, in any State in which said protestants, or any one or more of them, own [fol. 262] property or own or use property for the purposes of a common carrier.

XI. And protestants represent and protest that said Commission has failed and omitted to comply with said provisions of said Section 19a and has not included in said order, entered on March 28, 1923, any data, statements, figures, amounts or values, representing or purporting to represent, any date later than June 30, 1916, and said order purports to be a tentative valuation as of said June 30, 1916, although since said June 30, 1916, there have been many and costly additions to the properties owned or used by these protestants, and all of them, and substantial changes and increases in the original cost to date and in the cost of reproduction new, and in the cost of reproduction less depreciation if any depreciation exists and in the other values and elements of value of all said properties.

XII. And protestants represent and protest that said order incorrectly states and substantially understates the amount and value of the working capital owned or used for the purposes of a common carrier, by protestants, and each and every of them, for the following reasons, that is to say:

1. The amount and value purporting to represent the working capital owned or used by said The Delaware and Hudson Company, as stated in said order, is a result arbitrarily obtained by the application to certain data, which data had and have no fixed, necessary, or determinable relation to such working capital or the amount or value thereof, of an arbitrary formula, and said amount and value purport-

ing to represent said working capital are, therefore, substantially less than the actual amount and value of such working capital owned or [fol. 263] used by said protestant on June 30, 1916; and said amount and value, reported and stated as aforesaid are substantially less than the actual amount and value of materials and supplies on hand and owned or used, for the purposes of a common carrier by said protestant, on said June 30, 1916. And the actual and true amount and value of said working capital, owned and used by said protestant, as aforesaid, is not contained or reported or shown in said order, or included in any amount or value therein contained, reported or shown.

2. The amount and value of the working capital owned or used by protestants, said The Albany and Susquehanna Rail Road Company; The Rensselaer and Saratoga Rail Road Company; Albany and Vermont Rail Road Company; Rutland and Whitehall Rail Road Company; Saratoga and Schenectady Rail Road Company; Northern Coal and Iron Company; The Ticonderoga Railroad Company; Chateaugay and Lake Placid Railway Company, and The Plattsburgh & Dannemora Railroad, and each of them, and the whole and every part thereof is wholly omitted and excluded from said order and from all amounts, figures and values representing, or purporting to represent, values included in said order.

XIII. And protestants represent and protest that said Commission has failed and omitted to ascertain, or to report, or to include in said order, the actual and true cost of reproduction new of the property and physical property and pieces of property owned or used by pro-[fol. 264] testants, or one or more of them, for common carrier purposes, and that said order contains and shows and reports amounts, figures or values which purport to represent cost of reproduction new of such property, or portions thereof, which said amounts, figures or values are substantially less than the actual and true cost of reproduction new and, among others, for the following reasons, that is to say:

1. Various and sundry property, physical property, and pieces of property, are wholly omitted and are not represented in any said amount, figure or value contained in said order.

2. The quantities of various and sundry property, physical property, and pieces of such property, are substantially understated, and are not the actual and true quantities existing on said June 30, 1916, or the actual and true quantities that would have had to be reproduced in the reproduction of the properties of these protestants on said June 30, 1916.

3. The prices applied to the quantities represented and reported in said order are lower than the actual and true prices prevailing on said June 30, 1916, and lower than the actual and true prices that would have had to be paid in the reproduction of said properties of these protestants on said June 30, 1916, and were arbitrarily fixed and determined without reference to the prices actually prevailing on said

date, and when not arbitrarily fixed and determined, as aforesaid, are, or purport to be, the average prices of a period of years which ended with June 30, 1914, and such average prices, even if correctly [fol. 265] ascertained, have no known, necessary, fixed or determinable relation to the actual and true prices of said June 30, 1916, and said prices of said period of years which ended on June 30, 1914, were, in many cases, arbitrarily estimated or determined and are lower than the actual and true average prices of said period which ended with June 30, 1914.

4. Said cost of reproduction new was arbitrarily estimated upon the basis of an arbitrary program or programs of construction, which program or programs could not have been applied or used in the actual construction of the property, physical property, and pieces of property, of these protestants, or any of them; and said program or programs involve numerous and arbitrary and contradictory and impossible assumptions as to the engineering methods and practices that could or would be adopted and followed in such reproduction or construction, and as to kinds and quantities of materials available and proper for use and that could or would be used in such reproduction or construction, and in many other respects and particulars said program or programs tended to produce, and did produce, untrue and substantially and unduly low estimates of cost of reproduction new.

5. The amount or amounts, if any, included in the figures, amounts or values, purporting to represent cost of reproduction new, which represent interest during construction, are the result of arbitrary assumptions concerning (a) the amount of capital necessarily on hand at various times during reproduction, (b) the rates of interest that would necessarily be paid during said period of reproduction and (c) the duration of said period of reproduction; and by reason of said arbitrary assumptions said amount, and all said amounts, included as aforesaid, are less and lower than the actual and true amounts, rates of interest, and duration of the period or periods of reproduction, and tended to result, and did result, in figures, amounts or values, purporting to represent cost of reproduction new, which are less and lower than the true cost of reproduction new on said June 30, 1916.

6. The amount, or amounts, if any, included in the figures, amounts or values, purporting to represent cost of reproduction new, which represent the cost of contingencies that would naturally and necessarily occur and result during the reproduction of the properties of these protestants, and all of them, are based upon arbitrary assumptions which are inconsistent with the facts, and all such arbitrary assumptions tended to result, and did result, in figures, amounts or values, purporting to represent cost of reproduction new, which are substantially lower than the true cost of reproduction new on said June 30, 1916.

7. The amount, or amounts, if any, included in the figures, amounts or values, purporting to represent cost of reproduction new,

which purport to represent the cost of general expenses that would naturally and necessarily be incurred and result during the reproduction of the properties of these protestants, and all of them, are based upon arbitrary assumptions which are inconsistent with the facts, and all such arbitrary assumptions tended to result, and did result, in figures, amounts or values, purporting to represent cost of [fol. 267] reproduction new, which are substantially lower than the true cost of reproduction new, on said June 30, 1916.

8. Nothing is included in said cost of reproduction new, to represent, or to allow for, taxes necessarily paid during the period of reproduction and all such taxes are wholly and entirely omitted and are not included or represented in any amounts, figures or values contained in said report which purport to represent cost of reproduction new.

9. Nothing is included in said cost of reproduction new, to represent or to allow for, the cost of developing the properties of these protestants, or any of them, after the initial cost of their reproduction in a new and unseasoned and undeveloped condition, and, although such cost of development would actually and necessarily be incurred in the reproduction of said properties, in the seasoned and developed condition in which they existed on said June 30, 1916, all said costs of development are wholly and entirely omitted and excluded from all amounts, figures or values, purporting to represent cost of reproduction new, contained in said order.

10. The amounts, figures or values purporting to represent cost of reproduction new, contained in said order, are lower than the actual and true cost of reproduction new by reason of arbitrary assumptions that certain materials could be obtained without cost, and at abnormally and impossibly low cost, and that materials of lower [fol. 268] quality, cost or value would, in such reproduction, be substituted for the materials of higher quality, cost and value, that were in the properties of these protestants, and all of them, on said June 30, 1916.

XIV. And protestants represent and protest that said Commission has failed and omitted to ascertain, or report, or to include in said order, the actual and true cost of reproduction less depreciation of the property, and physical property, and pieces of property, owned or used by protestants, or one or more of them, for common carrier purposes, and that said order contains and shows and reports amounts, figures or values purporting to represent cost of reproduction less depreciation of such property or portions thereof, which said amounts, figures, or values are substantially less than the actual and true cost of reproduction less depreciation, and, among others, for the following reasons, that is to say:

1. The property, and physical property, and pieces of property, of protestants, and all of them, had been on said June 30, 1916, and at all times theretofore, fully and adequately maintained, in condition adequate and sufficient and satisfactory for their use for the

common carrier purposes for which they were established and exist, and in a condition in no respect lower than or inferior to, the maximum condition at any time beginning with the original construction of said properties, or any of them, and on said June 30, 1916, all said property of these protestants, and each and every of them, was in a condition of maximum efficiency for their purposes as a common carrier, and there was no depreciation of said property of any protestant below the true and actual cost of reproduction.

2. The methods, rules and principles applied in arriving at the conclusions, figures, amounts or values stated or reported or included in said order, and applied and used in arriving at said conclusions, figures, amounts or values, were arbitrary, and based upon arbitrary assumptions, and tended to result, and did result in the statement of figures, amounts or values which are substantially below and lower than the true values that would accurately represent the cost of reproduction less depreciation on said June 30, 1916.

3. The amounts, figures or values, stated, or reported, or included in said order, as representing cost of reproduction less depreciation, are in numerous cases based upon arbitrary assumptions concerning the duration or average duration of the service life of various and sundry items or pieces or kinds of property, which are less and shorter than the actual and true duration or average duration of the service life of such respective items or pieces or kinds of property and tended to result, and did result, in the statement of figures, amounts or values which are substantially below and lower than the true values that would accurately represent the cost of reproduction less depreciation on said June 30, 1916.

4. The figures, amounts or values stated or reported or included in said order, as representing cost of reproduction less depreciation, are based upon the application, in connection with arbitrary assumptions concerning the duration or average duration of the service life of respective items or pieces or kinds of property, of the arbitrary assumption that such cost of reproduction less depreciation decreases in exact proportion with the passing of the period arbitrarily assumed to be the service life or average service life, as aforesaid, which said assumption is contrary to the fact and tended to result, and did result, in figures, amounts or values purporting to represent cost of reproduction less depreciation, that are substantially less than the actual and true amounts and values representing cost of reproduction less depreciation on said June 30, 1916.

5. No allowance is made in any of said figures, amounts, or values, stated or reported or included in said order, as representing cost of reproduction less depreciation, for the appreciation of any property, physical property, or piece of property, although much of said property, and many of said pieces of property, had actually appreciated, in substantial amounts and values, prior to said June 30, 1916, and were on said date in an appreciated con-

dition, and said appreciation is wholly and entirely ignored, omitted and excluded from all figures, amounts or values stated or reported in said order.

6. The Methods, rules and principles applied in obtaining the figures, amounts or values, stated, or reported or included in said order, as representing cost of reproduction less depreciation, arbitrarily required the separation of said track into its component parts, such as the rail, ties, ballast, and other parts thereof, and de-[fol. 271]preciating each of these parts in accordance with an arbitrary estimate of its expired service life, and in the statement or report in said order that a definite portion or percentage of the service life of the track on the date of valuation had actually expired on said June 30, 1916, which is contrary to the fact that the life of a properly maintained railroad track is indefinite.

7. The methods, rules and principles arbitrarily applied, as aforesaid, resulted in the statement or report, in said order, that on said June 30, 1916, a definite portion or percentage of the service life of the railroads of these protestants had actually expired, which is contrary to the fact that the life of every properly operated and maintained railroad, as of these railroads, is continuous and indefinite, and that there is never at any time any known or ascertainable part of its service life which has expired.

8. The methods, rules and principles applied in obtaining the figures, amounts or values stated or reported or included in said order, as representing cost of reproduction less depreciation, arbitrarily required the depreciation of numerous items of cost or value and of property, physical property and pieces of property, that do not in any degree or extent or under any normal conditions or upon any properly operated or properly maintained railroad, deteriorate or depreciate or diminish in value.

9. And protestants repeat and reaffirm, as a part of this, their protest against said order and the report or statement of cost of re-[fol. 272]production less depreciation therein, contained, all and singular, their grounds of protest, hereinbefore stated, against and to the methods, rules and principles which were employed in obtaining the figures, amounts or values, included in said order, which purport to represent or to report the cost of reproduction new of the properties of these protestants.

XV. And protestants represent and protest that various and sundry pieces and parcels of land, and certain other property, and pieces of property, both real and personal, owned or used by protestants, or one or more of them, on June 30, 1916, and acquired and owned or used, on said date, for common carrier purposes, are classified and reported, in said order, as though they were non-carrier lands, that is to say, as lands which, on said June 30, 1916, were not owned or used for any common carrier purposes of these protestants, or any of them.

XVI. And protestants represent and protest that the figures, amounts or values, stated, or reported, or included in said order, which purport to represent the value or values of the lands owned or used by protestants, or one or more of them, for common carrier purposes, are substantially lower than the real and actual value or values of such lands on June 30, 1916, and for the following reasons:

1. The figures, amounts or values reported or included in said order are estimates of the average market value per acre, or other [fol. 273] unit, of adjoining, or adjacent land, or lands in the vicinity arbitrarily assumed to be similar lands, applied to the ascertained area of protestants' lands, computed into acres, or such other unit, although protestants' lands, by reason of the small areas and peculiar shapes in which they are held, could not have been acquired, and were not acquired, at the average values so reported and protestants' lands, and each and every part thereof, have and possess, on account of their small areas and their adaptability to common carrier uses, values materially greater than said reported values.

2. The figures, amounts or values, reported or included in said order, do not include any allowance for the special cost of acquisition of lands adapted to common carrier uses, although in order to procure such lands protestants had to pay severance and other damages and increased prices and for the extinguishment of many rights easements and privileges of the grantors, the cost and value of none of which is, or could be, represented in the average price of adjoining or adjacent or similar lands.

3. The figures, amounts or values, reported or included in said order, do not include any amount or amounts, and do not include any sufficient amount or sufficient amounts, on account of the rights of protestants, and each of them, to cross, occupy or use, in whole or in part, and either exclusively or jointly or in common with others, private or public property which is not actually owned or exclusively held under lease or contract by protestants, or any one or more of them.

[fol. 274] XVII. And protestants represent and protest that the statements, figures, amounts or values in said order, which purport to present or to represent facts concerning or relating to aids, gifts and grants of right-of-way, in aid of or made to protestants, or in aid of or to one or more of them, are inaccurate and misleading, and that in many cases the property, physical property, pieces of property and land or lands or real estate, reported as aids, gifts or grants, were acquired by protestants, or one or more of them, at a substantial cost, which substantial cost is not reported in said order or included or represented in any figure, amount or value reported or included therein.

XVIII. And protestants represent and protest that said order contains many statements with regard to the accounts of protestants, or one or more of them, and with regard to available records and accounts and records tending to show the amount or amounts of the

investment of protestants, or one or more of them, in road and equipment, or in some portion of said road or equipment, and the cost, receipts, expenditures, or other accounting facts concerning or relating to their properties, or some of them, which said statements are in whole, or in part, inaccurate and misleading.

XIX. And protestants represent and protest that, on said March 28, 1923, and at all times prior thereto, the said Commission was [fol. 275] without power or authority to make or to enter any order fixing or establishing any tentative valuation, within the meaning of said Section 19a, in respect of the property, or properties, of these protestants, or any of them, for the reason that such power or authority results and arises, under said Section 19a, when, and only when, said Commission has completed a tentative valuation that is based upon and represents the inquiry and investigation provided for in said Section 19a, and on said March 28, 1923, said Commission had not made or completed said inquiries or investigations in respect of the properties of these protestants, or any of them.

Prayer

Wherefore, the protestants, basing this, their protest against the said order upon each and all the grounds herein stated, and upon such other grounds as may hereafter be submitted, and reserving the right to set forth hereafter further details of their objections and exceptions to the said order, and every part thereof, including any document or documents or other matter or matters that may be held or considered to have been made part thereof by any reference therein contained, pray the Interstate Commerce Commission, as follows, that is to say:

1. That the said Commission dissolve and withdraw the said order and refuse to proceed thereon as though said order contained or established any tentative valuation, within the meaning of the Interstate Commerce Act, and refuse to make the same final.

[fol. 276] 2. That the many errors of law and of fact appearing in said order, as herein pointed out or as may hereafter be pointed out, be corrected, in any such tentative valuation and in any final valuation of said properties.

3. That the erroneous methods, rules and principles, which have been applied in the making of said order, and the many erroneous results thereby produced, be changed and corrected, in accordance with the proper methods, rules and principles, as herein pointed out or as may hereafter be pointed out and that a lawful tentative valuation be made, in accordance with such changes and corrections and in compliance with the Interstate Commerce Act.

4. That said order be revised and corrected, in accordance with the grounds of this protest so that, as revised and corrected, it will contain, among other things, a statement of the methods of valuation employed, and an analysis thereof; a statement of the elements that

constitute the values ascertained and assigned to the several classes of property of the protestants, and a true statement of the value of the protestants' properties, determined in accordance with the grounds of this protest.

5. That the said order be revised, corrected and amended so that it will contain a statement of the *basic and underlying facts* representing the said properties, found in accordance with the grounds of this protest, including therein a statement of the original cost to date of said properties.

[fol. 277] 6. That the said order, because it is an attempted determination of the value of the properties as of a date long since passed, and by the use of unit prices and costs for labor, materials, money and land, long since obsolete; be dissolved, and withdrawn, and that the Commission proceed to determine the tentative valuation of the properties of the protestants, as of the present time.

7. That the Commission grant such further and other relief as it may deem necessary to the protection of the value of their properties and property rights and to comply with the requirements of the Interstate Commerce Act.

The Delaware and Hudson Company, by W. H. Williams, Vice-President. The Albany and Susquehanna Rail Road Company, by Arthur W. Butler, President. The Rensselaer and Saratoga Rail Road Company, by Le Grand C. Cramer, President. Albany and Vermont Rail Road Company, by Edward C. Gale, President. Rutland and White-
[fol. 278] hall Rail Road Company, by L. F. Lorce, President. Saratoga and Schenectady Railroad Company, by Le Grand C. Cramer, President. Northern Coal and Iron Company, by W. H. Williams, Vice-President. The Ticonderoga Railroad Company, by W. H. Williams, President. The Chateaugay and Lake Placid Railway Company, by W. H. Williams, Vice-President. The Chateaugay and Lake Placid Railway Company, as lessee of the Plattsburgh and Dannemora Railroad, by W. H. Williams, Vice-President. Walter C. Noyes, H. T. Newcomb, of Counsel. May 10, 1923.

[fol. 279] DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

OPINION PER CURIAM—Filed July 16, 1923

The Interstate Commerce Act as amended (Sec. 19a) requires the Commission to "investigate, ascertain and report the value of all the property owned or used by every common carrier subject to the provisions of this act."

The Commission having arrived at a valuation of the property of the petitioners, has embodied the same in what is called a "Tentative valuation" in sub-sections f and h of said Section 19a.

[fol. 280] Petitioners being dissatisfied with said "tentative valuation," bring this petition seeking a decree that said "tentative valuation" of the Commission "be set aside, annulled and suspended, and that a permanent injunction issue preventing the entry of any order fixing final value before a lawful tentative valuation has been made."

The present motion is, in the language of the petition for "an interlocutory injunction suspending and restraining the enforcement, operation and execution of said (tentative valuation) in whole or in part and setting the same aside."

The motion coming on to be heard before the above named Judges pursuant to Jud. Cod. Sec. 266, petitioners filed certain affidavits in support of said motion, and proved that they had on or about May 10, 1923, and within thirty days of the filing of said tentative valuation filed a "protest of the same" pursuant to said Interstate Commerce Act, Sec. 19a, sub-section h; and thereupon both the respondent and the intervenor filed motions to dismiss the petition substantially on the following grounds:

[fol. 281] 1st. The Court has no jurisdiction over the subject matter of the petition and may not properly grant any portion of the relief prayed for therein;

2d. The facts pleaded are insufficient to entitle petitioners to any relief in equity.

H. G. Newcomb and Walter G. Noyes for petitioners;

P. J. Farrell for Interstate Commerce Commission;

W. D. Riter, Assistant Attorney General, for the United States.

PER CURIAM: The unusual nature of this application requires brief explanation. Section 19a of the Interstate Commerce Act plainly puts the burden on the Commission of producing what is called a "tentative valuation." Such valuation is without any probative effect per se; no proceedings can be based thereupon, and it is no more than a preliminary opinion expressed by the Commission. We think the so-called "tentative valuation" is properly described as an ex parte appraisalment.

To be sure, this "tentative valuation" becomes final if a protest be not filed within thirty days. Petitioners have filed such protest, and they have thereby created an issue raised by what is the equivalent of a pleading; and that issue (as appears from the terms of the pro-[fol. 282] test) consists substantially of two questions—(1) is the tentative valuation correct in point of fact, and (2) is it properly made in point of law.

Having raised these two questions, however, petitioners bring what is practically a bill in equity for the purpose of avoiding the necessity of trying the issue presented in the manner aforesaid; such prevention of trial being brought about by demanding a decree totally suppressing said "tentative valuation."

To the demand thus made the parties defendant have substantially filed a general demurrer.

To question in general terms the jurisdiction of the Court always introduces an element of confusion. This is because the word "jurisdiction" always needs definition. In its widest sense jurisdiction is no more than the power to hear and determine the subject matter in controversy (*Rhode Island vs. Massachusetts*, 12 Pet., 657; and in that general sense every court possesses the right to hear and determine some question presented by the pleadings of a cause brought [fol. 283] in it, if it be no more than the right to pass on its own power to hear the case.

These motions to dismiss really mean no more than that on the face of the petition or bill plus affidavits and protest, petitioners are not entitled to have this "tentative valuation" suppressed.

Jurisdiction in some sense is derived from Section 1 (2d) of the Commerce Court Act (36 Stat., 539), this being a case brought to "set aside, annul or suspend in whole or in part any order of the Interstate Commerce Commission." This jurisdiction was transferred to this Court by 36 Stat., 219.

Undoubtedly the tentative valuation of petitioner's property above referred to is an order of the Commission. Therefore this suit may be brought and this Court must entertain it.

But of course it does not follow that petitioners are entitled now to any relief.

An examination of the petition and a comparison thereof with the protest filed by petitioners shows that the substance of complaint may be summarily stated as follows:—the Commission did not ascertain the original cost to date of each piece of property other than land [fol. 284] used by petitioners for common carrier purposes; it did not report in detail the original cost of lands, rights of way and terminals owned or used for common carrier purposes by petitioners; it did not report the original cost and present value or either of any property held by petitioners for purposes other than those of a common carrier; it omitted certain specified railroad tracks or portions thereof which one of said petitioners is entitled to use as well as certain other railway and/or terminal adjuncts used by one of the petitioners jointly with other carriers;—and it did not report the value as a whole of the properties of petitioners.

We have not set forth all the objections of petitioners, but the above are sufficient to indicate the kind of objection made, on which and by reason of which it is demanded that the "tentative valuation" be suppressed and held for naught.

We repeat that we regard this "tentative valuation" under the statute as an *ex parte* appraisalment. Any such matter necessarily gives rise to many differences of opinion. The evident object of the statute is to ascertain for purposes of rate-making and money-borrowing [fol. 285] the reasonable and probable going value of that property which is devoted to serving the public as a common carrier. What particular pieces of property are so used is oftentimes matter of opinion about which honest and well informed men may differ. As to original cost, it is to be remembered that at least one of these

petitioners can trace its corporate life backward for nearly a century; and the ascertainment of some items of original cost, as well as added cost, may be in the opinion of many if not most men a veritable impossibility.

No statute law should be held to require the impossible unless the language thereof permits of any other interpretation. It would serve no useful purpose to go into detail, but after examination this court is of opinion that the Commission's "tentative valuation" complies with the spirit of the statute, and on its face comes as near to complying with the letter as the facts permitted,—in the Commission's opinion.

Argument has developed as petitioners' legal position,—that they are entitled to a literal compliance with the statute because the protest (treated as a pleading) puts them in the position of plaintiffs [fol. 286] upon whom lies the burden of proving that the "tentative valuation" is erroneous, incomplete or otherwise unjust.

We perceive no force in this objection; and think that the protest no more than serves to limit discussion of the questions of fact and law which must arise upon any such valuation.

If the statute required no tentative valuation and petitioners asserted (as they do assert by their published accounts) a certain stated value for their possessions, it would still and always be incumbent upon them to prove the correctness of their own figures. They are in no worse position by reason of anything that has been done.

Entertaining these views, we are of opinion (1) that the Commission has reasonably complied with the requirement of the statute in respect of "tentative valuation," and (2) that the petitioners are not placed in any legally disadvantageous position by any act of the Commission.

We therefore conclude that there is no equity in this application to suppress a merely preliminary step in a lawful valuation proceeding [fol. 287] ing, and for that reason dismiss the petition without costs.

All concur:

C. M. H.

Dated, July 16, 1923.

[File endorsement omitted.]

[fol. 288] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

FINAL DECREE—Filed September 12, 1923

This cause came on to be heard at this term, and was argued by counsel; and, thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows:

Final Decree

1. That the motion of the petitioners for a preliminary injunction be and the same is hereby denied.

2. That the motion of the United States and the motion of the Interstate Commerce Commission to dismiss the petition are, and [fol. 289] each of them is, hereby sustained, and that the petition be, and the same is hereby, dismissed for want of equity.

By the court.

30th August, 1923.

Chas. M. Hough, Circuit Judge, Presiding. Jno. C. Knox,
Henry W. Goddard, District Judges.

Consented to: W. D. Riter, Asst. Atty. Genl., Solicitor for Respondent. P. J. Farrell, Solicitor for Intervening Respondent.

[File endorsement omitted.]

[fol. 290] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

PETITION FOR APPEAL—Filed September 25, 1923

The above named petitioners (being all those petitioners named in the petition) considering themselves aggrieved by the final decree dated August 30, 1923, and entered on September 12, 1923, in the above entitled proceeding before the Honorable Charles M. Hough, United States Circuit Judge, and the Honorable John C. Knox, and the Honorable Henry W. Goddard, District Judges, sitting in this Court in pursuance of the Act of October 22, 1913, denying, after hearing, the application of said petitioners for a permanent injunction restraining the enforcement, operation and execution of, and setting aside in whole and in part, an order of the Interstate Commerce Commission made on March 28, 1923, in a certain proceeding entitled and known as "Valuation Docket No. 328," and dismissing their petition, pray that an appeal may be allowed them to the Supreme Court of the United States from said final decree and order of this Court denying said application for a permanent injunction, and dismissing their petition, for the reasons specified in the assignment of errors filed herewith and that a transcript of the record, proceedings and papers on which said order denying said permanent injunction and dismissing said petition was made and entered, duly authenticated, may be transferred for-with to the Supreme Court of the United States.

September 17, 1923.

Walter C. Noyes, H. T. Newcomb, Solicitors for Petitioners.

[File endorsement omitted.]

[fol. 292] DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ASSIGNMENT OF ERRORS—Filed September 25, 1923

And now come the above named petitioners and in connection with their petition for appeal assign the following errors.
[fol. 293] The District Court erred:

I. In denying the application of the above named petitioners for a permanent injunction restraining the enforcement of the order of the Interstate Commerce Commission dated March 28, 1923, described in the petition.

II. In holding that the above named petitioners are not entitled to relief in accordance with the prayers of the petition.

III. In dismissing the petition.

IV. In holding that the order of the Interstate Commerce Commission, dated March 28, 1923, described in the petition, is or contains or establishes any tentative valuation of the property or properties of the petitioners, or any of them, within the meaning of Section 19a of the Interstate Commerce Act.

V. In holding that the Interstate Commerce Commission is not required to ascertain and report in any tentative valuation of the property or properties of petitioners, or any of them, the original cost to date of each piece of property other than land owned or used by them, or any of them, for common carrier purposes.

[fol. 294] VI. In holding that the Interstate Commerce Commission is not required to ascertain and report in any tentative valuation of the property or properties of petitioners, or any of them, the original cost of all lands, rights of way, and terminals owned or used for common carrier purposes by them, or any of them, ascertained as of the time of dedication to public use.

VII. In holding that the Interstate Commerce Commission is not required to report in any tentative valuation of the property or properties of petitioners, or any of them, an analysis of the methods by which the several costs, namely, original cost to date, cost of reproduction new, and cost of reproduction less depreciation, were obtained by said Commission, and the reasons for their differences, if any.

VIII. In holding that the Interstate Commerce Commission is not required to ascertain and report in any tentative valuation of the property or properties of petitioners, or any of them, separately, other values and elements of value of the property or properties of such petitioner or petitioners, and the reasons for any differences between any such value and the several cost values.

IX. In holding that the Interstate Commerce Commission is not required to ascertain and report in any tentative valuation of the [fol. 295] property or properties of petitioners, or any of them, separately, all property held for purposes other than those of a common carrier by such petitioner or petitioners, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

X. In holding that the Interstate Commerce Commission is not required to ascertain and report in any tentative valuation of the property or properties of petitioners, or any of them, the value of the property or properties of such petitioner or petitioners, as a whole.

XI. In holding that the Interstate Commerce Commission is not required to ascertain and report in any tentative valuation of the property or properties of petitioners, or any of them, the value of the property or properties of such petitioner, or petitioners, as a whole in each of the several States.

XII. In holding that the Interstate Commerce Commission is not required to ascertain and report and include in any tentative valuation of the property of petitioner The Delaware and Hudson Company, that certain railroad or portion of railroad used by said petitioner, for its purposes as a common carrier and as part of its main line of railroad, located between Carbondale and Jefferson Junction, in the State of Pennsylvania, said railroad or portion of railroad being owned and also used by Erie Railroad Company.

[fol. 296] XIII. In holding that the Interstate Commerce Commission is not required to ascertain and report and include in any tentative valuation of the property or properties of petitioners, or any of them, all property used for common carrier purposes by said petitioners, or any of them, although said property may be owned by and also used by other common carriers subject to the Interstate Commerce Act.

XIV. In holding that the Interstate Commerce Commission, having selected June 30, 1916, as the date as of which it would ascertain and report the respective values of the property and properties of petitioners, and any of them, was not required to ascertain and consider, in making any tentative valuation thereof, the prices and wages and cost of reproduction actually prevailing and in effect on said June 30, 1916.

XV. In holding that the Interstate Commerce Commission, having selected June 30, 1916, as the date as of which it would ascertain and report the respective values of the property and properties of petitioners, and any of them, could ascertain or fix or determine such value, for the purposes of any tentative valuation, upon the basis of prices and wages actually prevailing or in effect on June 30, 1914, or upon the basis of prices and wages or average prices and wages prevailing or in effect throughout a term of years ending with June 30, 1914.

[fol. 297] XVI. In holding that the Interstate Commerce Commission was not required to ascertain and report in any tentative valuation of the property or properties of petitioners, or any of them, the working capital actually in use on the date with regard to which said tentative valuation was ascertained or fixed or determined.

XVII. In holding that the Interstate Commerce Commission was not required to ascertain and report in any tentative valuation of the property or properties of petitioners, or any of them, the working capital actually in use but might substitute for such working capital an amount or value less than such working capital, resulting from the use or application of, or resort to, an arbitrary formula based upon facts having no relation to working capital, or to the working capital of petitioners, or any of them.

XVIII. In holding that a tentative valuation of the property of petitioners, or any of them, does not become and constitute prima facie evidence of the respective values of the property or properties of petitioners in any hearing or hearings before the Interstate Commerce Commission on any protest or protests which have been or may be filed by petitioners, or any of them.

XIX. In holding that petitioners, and each of them, are not injured by the order of March 28, 1923, described in the petition.

[fol. 298] Wherefore, the above named petitioners, and each of them, pray that said final decree and order of said Court denying their application for a permanent injunction and dismissing said petition be reversed and set aside, with directions that such application be granted and for such other and permanent relief as may be appropriate.

(Signed) Walter C. Noyes. (Signed) H. T. Newcomb, Solicitors for Petitioners.

[File endorsement omitted.]

[fol. 299] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ORDER ALLOWING APPEAL—Filed September 25, 1923

In the above entitled cause the petitioners having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of this Court dated August 30, 1923, and entered September 12, 1923, denying their application for a permanent injunction restraining the enforcement of an order of the Interstate Commerce Commission and having made and filed

an assignment of errors and having conformed in all respects to the statutes and rules of court in such case made and provided, it is

Ordered and decreed that the appeal prayed for be and it is hereby allowed, and the Clerk is directed to transmit forthwith a properly [fol. 300] authenticated transcript of the record, papers and proceedings to the Supreme Court of the United States.

September 20th, 1923.

C. M. Hough, Circuit Judge, Presiding. Jno. C. Knox,
Henry W. Goddard, District Judges.

[File endorsement omitted.]

[fols. 301 & 302]

BOND

A Bond in the sum of \$500, with Fidelity and Casualty Company of New York as surety, was filed on Sept. 25, 1923, duly approved by Judges Hough, Knox, and Goddard, District Judges.

[fols. 303-305] CITATION—In usual form, showing service on P. J. Farrell and W. D. Riter, filed October 15, 1923; omitted in printing

[fol. 306] DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

ORDER ENLARGING TIME FOR DOCKETING APPEAL AND FILING RECORD—Filed October 16, 1923

Good cause being shown to the undersigned Judges who signed the citation upon appeal in the above entitled cause why the time within which the appellants should docket the case and file the record thereof with the Clerk of the Supreme Court of the United States should be further enlarged, it is

Ordered that the time within which the appellant shall docket this case and file the record thereof with the Clerk of the Supreme Court of the United States be and the same is hereby enlarged and extended until November 10, 1923.

October 12, 1923.

Jno. C. Knox, Henry W. Goddard, District Judges.

Consented to: W. D. Riter, for the United States. P. J. Farrell,
for the Interstate Commerce Commission.

[File endorsement omitted.]

[fol. 307] IN THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK

[Title omitted]

PRÆCIPUE FOR RECORD—Filed October 15, 1923

The Clerk of this Court is hereby requested and directed to prepare and certify a transcript of the record in the above entitled case for the use of the Supreme Court of the United States, by including therein the following:

1. Petition with exhibit attached thereto.
2. Order to show cause.
3. Petition of intervention of the Interstate Commerce Commission.
4. Motion of the United States to dismiss.
5. Motion of Interstate Commerce Commission to dismiss.
6. Minutes of proceedings of June 28, 1923, before the United States District Court, except the argument.

[fol. 308] 7. Affidavits received upon the hearing before the United States District Court; viz., (a) of H. E. Hale (b) and George H. Burgess.

8. Protest to Interstate Commerce Commission of petitioners received upon the hearing before the United States District Court.

9. Opinion of the Court per curiam.
10. Final decree.
11. Petition for appeal.
12. Bond on appeal.
13. Assignment of errors.
14. Order allowing appeal.
15. Citation.
16. Præcipe.
17. Order enlarging time for docketing appeal and filing record.

Dated this 12th day of October, 1923.

Walter C. Noyes, H. T. Newcomb, Solicitors for Appellants.

[File endorsement omitted.]

[fol. 309] UNITED STATES OF AMERICA,
Southern District of New York, ss:

[Title omitted]

CLERK'S CERTIFICATE

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York this first day of November, in the year of our Lord one thousand nine hundred and twenty-three, and of the Independence of the said United States the one hundred and forty-eighth.

Alex. Gilchrist, Jr., Clerk. (Seal of District Court of the United States for the Southern District of New York.)

Endorsed on cover: File No. 29,943. S. New York D. C. U. S. Term No. 633. The Delaware and Hudson Company, The Albany and Susquehanna Rail Road Company, Rensselaer and Saratoga Rail Road Company, et al., appellants, vs. The United States of America and The Interstate Commerce Commission. Filed November 8th, 1923. File No. 29,943.

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U. S. DEPT. OF JUSTICE

Supreme Court of the United States

OCTOBER TERM, 1924.

No. 212.

THE DELAWARE AND HUDSON COMPANY,
THE ALBANY AND SUSQUEHANNA
RAILROAD COMPANY, RENSSELAER
AND SARATOGA RAILROAD COMPANY,
et al.,

Appellants,

v.

THE UNITED STATES OF AMERICA AND
THE INTERSTATE COMMERCE COMMISSION,

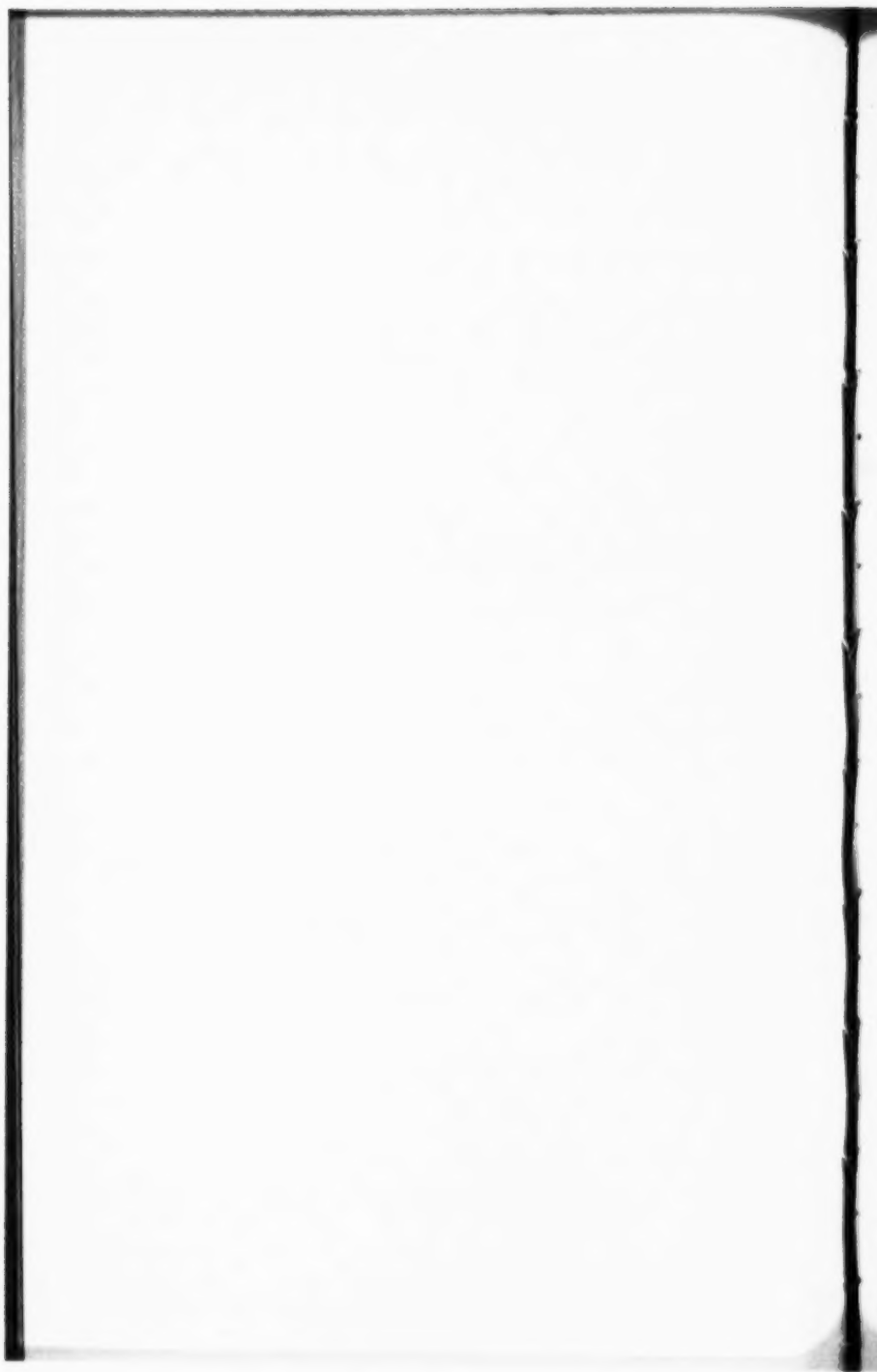
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF NEW
YORK.

BRIEF FOR APPELLANTS.

WALTER C. NOYES,
H. T. NEWCOMB,
Attorneys for Appellants.

October 24, 1924.



ANALYTICAL TABLE OF CONTENTS.

	PAGE
I. STATUS	1
II. STATEMENT OF FACTS.....	2
III. QUESTIONS IN ISSUE.....	6
IV. SPECIFICATIONS OF ERROR.....	7
V. ARGUMENT	9
FIRST. THE ORDER OF MARCH 28, 1923, DOES NOT COMPLY WITH THE VALUA- TION ACT	9
SECOND. THE INTERSTATE COMMERCE COM- MISSION HAVING REFUSED AND OMITTED TO COMPLY WITH THE VALUATION ACT, ITS ORDER OF MARCH 28, 1923, IS IL- LEGAL AND VOID AND CANNOT TAKE THE PLACE OF A LAWFUL "TENTATIVE VALU- ATION" IN THE FURTHER PROCESS OF VALUATION OF APPELLANTS' PROPERTIES WHICH IS PRESCRIBED BY THE LAW...	12
A. <i>Refusal to find original cost to date of property other than land.....</i>	19
B. <i>Refusal to find original cost of com- mon carrier lands, etc.....</i>	38

	PAGE
C. <i>Refusal to find value of the property as an whole and by States.....</i>	42
D. <i>Refusal to include analyses and reasons</i>	48
E. <i>Refusal to report "other values and elements of value".....</i>	68
F. <i>Refusal to include certain property used for common carrier purposes.</i>	79
G. <i>Refusal to include the working capital actually owned or used, as common carrier property.....</i>	85
H. <i>Refusal to apply current prices....</i>	94
THIRD. APPELLANTS WOULD BE SUBSTANTIALLY INJURED IF THE ORDER OF MARCH 28, 1923, SHOULD BE PERMITTED TO OPERATE AS A "TENTATIVE VALUATION" IN THE FURTHER PROCESS PRESCRIBED BY THE VALUATION ACT.....	102
A. <i>Appellants are entitled to a lawful "tentative valuation" as the statutory foundation for further proceedings in the statutory process of valuation by the Commission.....</i>	103
B. <i>In the determination of "final valuations," in proceedings upon protest to "tentative valuations," the Interstate Commerce Commission consistently treats the latter as having evidentiary force beyond that ordinarily attributed to mere prima facie evidence.....</i>	118

C. *In fixing railway rates and other matters within its authority, the Interstate Commerce Commission consistently treats its "tentative valuations," and even the inquiries of its Bureau of Valuation that are preliminary to "tentative valuations," as having evidentiary weight* 136

D. *Every carrier is entitled to a lawful "tentative valuation," as the basis of a protest, if it desires to make one, and of the proceedings upon such protest, but protests based upon errors of law in a "tentative valuation" do not result in the formulation of a lawful "tentative valuation" and fail therefore to protect the rights infringed by an unlawful order, like that of March 28, 1923* 152

FOURTH. THIS IS A SUITABLE PROCEEDING
IN WHICH APPELLANTS ARE ENTITLED
TO RELIEF AGAINST THE ORDER OF
MARCH 28, 1923..... 157

VI. CONCLUSION 171

APPENDICES:

PAGE

I. EXTRACT FROM REPORT AND OPINION OF THE MAJORITY OF THE INTERSTATE COMMERCE COMMISSION, CONCURRING OPINION OF MR. COMMISSIONER POT- TER, DISSENTING OPINION OF MR. COM- MISSIONER EASTMAN AND DISSENTING OPINION OF MR. COMMISSIONER MC- MANAMY, IN THE MATTER OF THE PETITION OF NATIONAL CONFERENCE ON VALUATION OF AMERICAN RAIL- ROADS, 84 I. C. C., 9, DECIDED ON NO- VEMBER 13, 1923.....	172
a. "Majority" report and opinion.....	172
b. Mr. Commissioner Potter, concurring	173
c. Mr. Commissioner Eastman, dissent- ing	186
d. Mr. Commissioner McManamy, dis- senting	188
II. EXTRACT FROM REPORT AND OPINION OF THE INTERSTATE COMMERCE COMMISS- ION IN THE MATTER OF RATES AND CHARGES ON GRAIN AND GRAIN PROD- UCTS, 91 I. C. C., 105, DECIDED ON JULY 10, 1924.....	190

LIST OF CITATIONS.

	PAGE
Adams, Henry C.....	23, 58
Adams v. New York, 192 U. S., 585.....	109
Adams Express Company v. Ohio State Auditor, 166 U. S., 185.....	74
Aitchison, Clyde B. (Commissioner)	28, 34, 93, 189
Ann Arbor Railroad, 84 I. C. C., 159..	22, 54, 129,
	130, 131, 132, 133, 156
Arizona Corporation Commission v. Arizona Eastern Railroad Company, 85 I. C. C., 76	151
Atchison, Topeka and Santa Fe Railway v. Interstate Commerce Commission, 190 Fed., 591	117
Atchison, Topeka and Santa Fe Railway v. United States, 203 Fed., 56.....	117
Atlanta, Birmingham and Atlanta Railroad, 75 I. C. C., 645.....	54, 60, 61, 128, 129, 156
Atlantic Coast Line Railroad v. Interstate Commerce Commission, 194 Fed., 449....	160
Atlantic Coast Line Railroad Company v. North Carolina Corporation Commission, 206 U. S., 20.....	112
Bailey v. Alabama, 219 U. S., 219.....	109
Bemis, Edward W.....	25, 26, 59, 60
Bluefield Water Works and Improvement Company v. Public Service Commission, 262 U. S., 679.....	65, 100, 101, 170
Boswell v. Pannell, 107 Texas, 433.....	109
Bowdon Railway, 84 I. C. C., 277.....	54, 135
Branson v. Bush, 251 U. S., 182.....	73
Brooks-Scanlon Company v. Railroad Commission, 251 U. S., 396.....	76

	PAGE
Brunswick & Topsham Water District v. Maine Water Company, 59 A., 537	74
Buchanan v. Warley, 245 U. S., 60.....	76
Bullfrog, Goldfield Railroad, 70 I. C. C., 354..	151
Bureau of Labor Statistics, Bulletin No. 320..	99
Bureau of the Census, Bulletin 21, "Com- mercial Valuation of Railway Operating Property"	71
 Campbell, Johnston B. (Commissioner), 84 I. C. C., 113	34, 189
Cedar Rapids Gas Light Company v. Cedar Rapids, 144 Iowa, 426, 48 L. R. A., N. S., 1025, 223 U. S., 655.....	74
Chicago Junction Case, Baltimore and Ohio v. United States, 264 U. S., 258.....	10, 164
Chin Yow v. United States, 208 U. S., 13.....	112
City of Winona v. Wisconsin-Minnesota Light & Power Company, 276 Fed., 996.....	61
Clements, Judson C. (Commissioner).....	23
Cleveland, Cincinnati, Chicago & St. Louis Railway v. Backus, 154 U. S., 439.....	73
Commons, John R.....	26, 29, 30, 31, 32, 58, 59
Conselyea v. Swift, 103 N. Y., 604.....	110
Corpus Juris, "Evidence", 22 C. J., 69.....	110
Cox, Frederick I. (Commissioner) ..	32, 54, 61, 62, 64, 66, 67, 93, 136, 165, 173-186, 189
Craig Mountain Railway, 79 I. C. C., 60.....	141
Cudahy Packing Company v. Minnesota, 246 U. S., 450.....	74
Cummins, Albert B.....	59
 Daniels, Winthrop M. (Commissioner).....	62
Danville & Western Railway, 84 I. C. C., 227..	54, 84, 93, 99, 134, 157

	PAGE
Delaware and Hudson v. United States, 295	
Fed., 558	2, 34
Denver v. Denver Union Water Company, 246	
U. S., 178.....	74
Des Moines Gas Company v. Des Moines, 238	
U. S., 153.....	74
Detroit United Railway v. Detroit, 248 U. S.,	
429	10
Durham and South Carolina Railroad, 84	
I. C. C., 313	54, 84, 93, 99, 108, 134, 157
Eastman, Joseph B. (Commissioner), 84	
I. C. C., 113	33, 34, 55, 61, 62, 67, 186, 187, 188
Esch, John J. (Commissioner).....	34, 189
Evansville & Indianapolis Railroad, 75 I. C. C.,	
443	53, 61, 62, 69, 135, 142
Florida East Coast Railway v. United States,	
234 U. S., 167.....	114
Florida East Coast Railway Company, 84	
I. C. C., 25... 54, 55, 62, 63, 64, 65, 66, 67, 68, 78,	
92, 93, 98, 99, 129, 136, 165	
Georgia, Ashburn, Sylvester & Camilla, 76	
I. C. C., 166	141
Georgia Railway and Power Company v. Rail-	
road Commission, 262 U. S., 625.....	101
Graham and Gila Counties, Traffic Association	
v. Arizona Eastern, 81 I. C. C., 134.....	151
Grain and Grain Products, 91 I. C. C., 105... 145,	
146, 147, 148, 149, 150, 151, 190-205	
Grand Trunk Railway of Canada Arbitration. 75	
Gray, Henry L.....	25, 28, 29

	PAGE
Groesbeck v. Duluth, South Shore and Atlantic Railway, 250 U. S., 607.....	85
Hall, Henry C. (Commissioner).....	78, 93
Harriman v. Interstate Commerce Commission, 211 U. S., 407.....	160
Hawes v. Georgia, 258 U. S., 1.....	109
Heineman v. Heard, 62 N. Y., 448.....	110
Hines' Trustees v. United States, 263 U. S., 137	160
Hoosac Tunnel & Wilmington Railroad, 84 I. C. C., 343	54, 135
Hurd v. Wing, 56 N. Y. App. Div., 595.....	109
Increased Rates, 1920, 58 I. C. C., 220..	141, 142, 144, 147, 148, 192, 195, 202, 203
International Harvester Company v. Kentucky, 234 U. S., 216.....	72
Interstate Commerce Commission, annual reports	23, 36, 46, 47, 57, 69, 71, 72, 91, 92, 142, 143, 145
Interstate Commerce Commission v. Alabama Midland Railway Company, 168 U. S., 144	162
Interstate Commerce Commission v. Chicago Great Western Railway, 209 U. S., 108...	94
Interstate Commerce Commission v. Chicago, Rock Island & Pacific Railway, 218 U. S., 88	159
Interstate Commerce Commission v. Delaware, Lackawanna & Western Railroad, 216 U. S., 535	159
Interstate Commerce Commission v. Delaware, Lackawanna & Western Railroad, 220 U. S., 251	113

	PAGE
Interstate Commerce Commission v. Diffe- baugh, 222 U. S., 42.....	160
Interstate Commerce Commission v. Goodrich Transit Company, 224 U. S., 194.....	117
Interstate Commerce Commission v. Illinois Central Railroad Company, 215 U. S., 452	112, 158, 159, 162
Interstate Commerce Commission v. Louisville & Nashville Railroad Company, 227 U. S., 88	110, 111, 112, 113, 114, 162
Interstate Commerce Commission v. Northern Pacific Railway, 216 U. S., 538.....	113, 160
Interstate Commerce Commission v. Northern Pacific Railway, 222 U. S., 541.....	158, 159
In the Matter of Making Inventories, 84 I. C. C., 1	84
Interstate Commerce Commission v. Union Pacific Railroad, 222 U. S., 541..	111, 162, 163
Kansas City Southern Railway, 75 I. C. C., 223	69, 124, 125, 142, 155
Kansas City Southern v. Interstate Commerce Commission, 252 U. S., 178..	10, 11, 12, 34, 35, 36, 37, 41, 48, 50, 168
Kansas City Southern Railway, 84 I. C. C., 113	32, 54, 55, 64, 65, 99, 142, 152
Keller v. Potomac Electric Power Company, 261 U. S., 428.....	164, 170
Knoxville and Carolina Railroad Bonds, 79 I. C. C., 542.....	141
Knoxville and Carolina Railroad Company, 72 I. C. C., 221.....	142
Knoxville, Sevierville and Eastern Railway, 84 I. C. C., 329.....	54, 99, 140, 157
Kwock Jan Fat v. White, 253 U. S., 454.....	114

	PAGE
La Follette, Robert M.....	27, 28, 57, 58
Lake Ontario National Bank v. Judson, 122 N. Y., 278.....	110
Louisiana and Pacific Railway v. United States, 209 Fed., 244.....	160
Louisville and Nashville Railroad, 76 I. C. C., 718	91, 92
Louisville & Nashville Railroad Company v. Interstate Commerce Commission, 195 Fed., 541	114
Louisville & Nashville Railroad Company v. Greene, 244 U. S., 522.....	74
Louisville & Nashville Railroad Company v. United States, 238 U. S., 1.....	27
Low Way Suey v. Backus, 225 U. S., 468.....	112
McChord, Charles C. (Commissioner).....	45, 46
McFarland v. American Sugar Refining Com- pany, 241 U. S., 79.....	109
McManamy, Frank (Commissioner).....	33, 188-9
Maltbie, Milo R.....	31
Manufacturers Railway Company v. St. Louis, Iron Mountain and Southern Railway Company, 32 I. C. C., 100.....	163
Manufacturers Railway Company v. St. Louis, Iron Mountain and Southern Railway Company, 28 I. C. C., 93.....	163
Manufacturers Railway Company v. United States, 246 U. S., 457.....	162, 163, 164
Meyer, Balthasar H. (Commissioner).....	76, 77
Michaelson v. United States, U. S., ...	22
Minnesota Rate Cases, 230 U. S., 352... 36, 61, 178	
Missouri-Kansas-Texas Reorganization, 76 I. C. C., 84	141

	PAGE
Mobile, Jackson and Kansas City Railroad v. Turnipseed, 219 U. S., 35.....	109
Monongahela Navigation Company v. United States, 148 U. S., 312.....	74
Monroe Gaslight and Fuel Company v. Michigan Public Utilities Commission, 292 Fed., 138	65
Muser v. Magone, 155 U. S., 247.....	112
National Conference on Valuation of American Railways, Petition of, 84 I. C. C., 9... 22, 32, 55, 63, 65, 66, 67, 68, 156, 172-189	
New England Divisions, 62 I. C. C., 513.....	151
New York, Philadelphia and Norfolk Railroad, 70 I. C. C., 299.....	151
Norfolk and Western Railway Company v. Conley, 236 U. S., 605.....	76
Norfolk Southern Railroad, 70 I. C. C., 774... 151	
Northern Pacific Railway Company v. North Dakota, 236 U. S., 585.....	76
Ohio Valley Company v. Ben Avon Borough, 253 U. S., 287.....	170
O'Keefe v. United States, 240 U. S., 294.....	27
Oklahoma Gas Company v. Russell, 261 U. S., 290	10, 168
Omaha v. Omaha Water Company, 218 U. S., 180	73
Omnia Commercial Company v. United States, 261 U. S., 502.....	74
Oregon Railroad and Navigation Company v. Fairchild, 224 U. S., 510.....	112
Parrish v. Sun Publishing Association, 6 N. Y. App. Div., 585.....	109

	PAGE
Pennsylvania v. West Virginia, 262 U. S., 553.	168
Pennsylvania Company v. United States, 236 U. S., 351.....	163
People v. Public Service Commission, 159 N. Y. App. Div., 546	110
People v. Public Service Commission, 215 N. Y., 241	97
Pittsburgh and West Virginia Railway, 76 I. C. C., 663	139
Potter, Mark W. (Commissioner) . . 18, 32, 33, 54, 61, 62, 64, 67, 78, 93, 126, 136, 165, 173-186, 189	
Prendergast v. New York Telephone Company, 262 U. S., 43.....	166
Proctor Gamble Company v. United States, 225 U. S., 282.....	161-164
Prouty, Charles A.....	96, 97
Public Utilities Commission v. Baltimore and Ohio Southwestern Railroad Company, 281 Ill., 405.....	116
Public Utilities Commission v. Springfield Gas and Electric Company, 291 Ill., 209.....	116
Reduced Rates, 1922, 68 I. C. C., 676... 142, 143, 144, 147, 148, 149, 192, 194, 201, 203, 204	
Reduced Rates, 1922, 77 I. C. C., 675.....	148, 151
Reduced Rates, 1922, 81 I. C. C., 170.....	151
Rhode Island Company, 84 I. C. C., 299... 54, 135	
Roberts v. United States, 176 U. S., 221.....	115
St. Louis Southwestern Railway v. Interstate Commerce Commission, 264 U. S., 64. 109, 110	
St. Louis and East St. Louis Electric Railway Company v. Missouri, 256 U. S., 314.....	74
San Pedro, Los Angeles and Salt Lake Railroad, 75 I. C. C., 463.. 18, 19, 53, 124, 125, 126, 127, 128, 156, 186	

	PAGE
Saratoga Springs v. Saratoga Gas, Electric and Power Company, 191 N. Y., 123.....	114
Seaboard Air Line Railway v. United States, 254 U. S., 57.....	158
Senate Document 284, 67th Congress, 4th Session	46
Senate Report No. 1,290, 62nd Congress, 3d Session..	17, 24, 25, 26, 28, 29, 31, 32, 57, 58, 77
Skinner and Eddy Corporation v. United States, 249 U. S., 557.....	160
Smyth v. Ames, 169 U. S., 466.....	16, 61, 65, 184
South Utah Mines and Smelters v. Beaver County, 262 U. S., 325.....	76
Southern Pacific Company v. Interstate Com- merce Commission, 219 U. S., 433....	112, 159
Southern Railway Company in Mississippi, 84 I. C. C., 253.....	54, 99, 134, 157
Southwestern Bell Telephone Company v. Pub- lic Service Commission, 262 U. S., 276..	16, 65, 94, 101
Statistics of Railway in United States, 1888, Interstate Commerce Commission	23, 57, 91, 92
Tang Tun v. Edsell, 223 U. S., 681.....	112
Taylor v. Secor, 92 U. S., 575.....	71, 75
Texas Midland Valuation Case, 75 I. C. C., 1..	21, 35, 39, 40, 44, 45, 49, 50, 51, 56, 57, 60, 69, 77, 81, 82, 83, 84, 86, 94, 95, 98, 99, 118, 119, 120, 121, 122, 123, 129, 142, 154, 155
Texas Midland Railroad, 84 I. C. C., 150..	54, 63, 93, 156
United States v. Atchison, Topeka and Santa Fe Railway, 234 U. S., 476.....	167

	PAGE
United States v. Baltimore and Ohio Railroad, 225 U. S., 306.....	114
United States v. Baltimore and Ohio South- western Railway Company, 226 U. S., 14	112, 114, 159
United States v. Illinois Central Railroad, 244 U. S., 82.....	160, 161
United States v. Louisville and Nashville Rail- road Company, 235 U. S., 314.....	163
United States v. New River Company, 265 U. S., 526	159
Union Tank Line v. Wright, 249 U. S., 275...	74
Whitlock v. Fidelity and Casualty Company, 149 N. Y., 45.....	110
Whitten, Robert H.....	23
Wichita Railroad & Light Company v. Public Utilities Commission of Kansas, et al., 260 U. S., 48.....	115, 116, 117
Winston-Salem Southbound, 75 I. C. C., 187..	69,
93, 96, 98, 142, 154, 155	
Wisconsin, Minnesota and Pacific Railway Company v. Jacobson, 179 U. S., 301.....	112
Wood River Branch Railroad, 84 I. C. C., 289	54, 135
Work v. United States, 262 U. S., 200.....	115
Zakonaite v. Wolf, 226 U. S., 272.....	112

Supreme Court of the United States

OCTOBER TERM, 1924.

THE DELAWARE AND HUDSON
COMPANY, THE ALBANY AND
SUSQUEHANNA RAILROAD COM-
PANY, RENSSELAER AND SARA-
TOGA RAILROAD COMPANY, *et al.*,
Appellants,

v.

THE UNITED STATES OF AMERICA
AND THE INTERSTATE COM-
MERCE COMMISSION,
Appellees.

No. 212.

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF NEW
YORK.

BRIEF FOR APPELLANTS.

I.

STATUS.

This is a direct appeal from a final decree (*R.* 259-260) in a suit brought to enjoin, suspend and set aside an order of the Interstate Commerce Com-

mission—*R. 15-232*. Appellants sued the United States in the District Court of the United States for the Southern District of New York, in accordance with the provisions of the Urgent Deficiency Act of October 22, 1913 (*38 Stat. 219-220, U. S. Comp. St. 1001*) and the Interstate Commerce Commission intervened—*R. 233*.

Motions to dismiss were separately entered by the United States (*R. 233*) and by the Commission (*R. 234*) and, after hearing on these motions by the statutory court (*R. 232, 235*), they were granted; appellants' motion for a preliminary injunction was denied, and a final decree, dismissing appellants' petition, was entered—*R. 259-260*.

The opinion of the District Court is printed in the Record (*R. 256-9*) and has been reported—*295 Fed. 558*.

II.

STATEMENT OF FACTS.

1. On March 28, 1923, the Interstate Commerce Commission entered an order (*R. 6, 15-232*), which fills 218 pages of the Record, purporting to set up "tentative valuations" of appellants' properties, in accordance with Section 19a (the "Valuation Act") of the Interstate Commerce Act. The first paragraph of this order is as follows:

"It is ordered, that the following be, and they are hereby declared to be, the tentative valuations of the properties of The Delaware

and Hudson Company, The Albany and Susquehanna Railroad Company, The Rensselaer and Saratoga Railroad Company, Albany and Vermont Railroad Company, Rutland and Whitehall Railroad Company, Saratoga and Schenectady Railroad Company, Northern Coal and Iron Company, The Ticonderoga Railroad Company, The Chateaugay and Lake Placid Railway Company, and The Plattsburgh and Dannemora Railroad, as of June 30, 1916"—*R. 6, 15-6.*

2. Petitioners are all the corporations named in the foregoing (there is no Plattsburgh and Dannemora Railroad corporation—*R. 62*) and, together, make up the system of railroads operated by appellant, The Delaware and Hudson Company (*R. 16*).

3. The order referred to in paragraph 1, was served upon appellants; upon the Governors of the States of New York, Pennsylvania and Vermont, and upon New York Public Service Commission, Public Service Commission of Pennsylvania, Vermont Public Service Commission, and National Association of Railway and Utilities Commissioners (*R. 6, 13-4*). At the same time, the parties thus served were directed, by the Commission, as follows:

"You are required to file with the Commission at its office in Washington on or before thirty (30) days from the 12th day of April, 1923, any protest which you may desire to make to such valuation, or to any part of such valuation"—*R. 15.*

4. A protest (*R. 242-256*) was filed on behalf of all appellants within the time limited as above (*R. 235*) and is a part of this Record (*R. 235, 242-256*), but—

5. Owing to the defective character of the order, appellants were not able to protect their rights by an adequate and proper and sufficiently full and detailed protest—*Petition XIX, R. 12.*

5. In making the order referred to in paragraph 1 the Commission refused and omitted to investigate, ascertain and report many of the facts required by the statute (*Section 19a of the Interstate Commerce Act*) to be investigated, ascertained and reported in all "tentative valuations." Among these facts are the following:

a. Original cost to date of property other than land, except as such original cost is shown by records—*Petition VI, R. 6;*

b. Original cost of lands, rights-of-way and terminals, except as such original cost is shown by records—*Petition VII, R. 6-7;*

c. Other values and elements of value—*Petition IX, R. 7;*

d. Original cost and present value of non-carrier property—*Petition X, R. 7;*

e. Value of property or properties of appellants, or any of them, as an whole—*Petition XI, R. 8;*

f. Value of property or properties of appellants, or any of them, as an whole, in the

several States in which located—*Petition XII, R. 8.*

6. In making the order referred to in paragraph 1 the Commission refused and omitted to investigate, ascertain or report concerning property used by appellant The Delaware and Hudson Company, for its purposes as a common carrier, and the use of which is essential to such purposes. Among the properties so omitted are:

a. A double-tracked railroad, 35.01 miles in length, between Carbondale, Pennsylvania, and Jefferson Junction, Pennsylvania—*Petition XIII, R. 8;*

b. The several railway properties indicated in paragraph XIV of appellants' petition—*R. 8-9.*

7. In making the order referred to in paragraph 1, the Commission refused to apply to its inventories, which were all made as of June 30, 1916, the prices existing and current on that date but applied and used prices of an undefined period or periods, such period and all such periods closing not later than June 30, 1914—*Petition XV, R. 9.*

8. In making the order referred to in paragraph 1, the Commission omitted to report the following:

a. Analyses of the methods employed—*Petition VIII, R. 7;*

b. Reasons for differences between the respective cost values or between these cost values and other values—*Petition IX, R. 7.*

9. In making the order referred to in paragraph 1, the Commission refused and omitted to investigate, ascertain or report the amount of working capital actually used by appellants, or any of them, for the purposes of a common carrier—*Petition XVI, R. 9-10.*

III.

QUESTIONS IN ISSUE.

Appellants contend that, upon the foregoing facts, the order of the Interstate Commerce Commission, entered on March 28, 1923 (*R. 6, 15-232*), is not a "tentative valuation," within the statutory definition contained in Section 19a of the Interstate Commerce Act; that they would be substantially and irreparably injured if that order should stand as though it were a "tentative valuation" conforming with the definition and process of the Valuation Act (*Section 19a*), and that they are therefore entitled to have the order in issue enjoined, suspended and set aside in this proceeding.

Section 19a, commonly called "the Valuation Act," to the authority of which the Interstate Commerce Commission refers the order of March 28, 1923, was printed in full in appellants' petition and appears in the Record—*R. 2-6*: See, also, *37 Stat. 701*; *41 Stat. 493*; *42 Stat. 624*; *U. S. Comp. St. 8591*.

IV.**SPECIFICATIONS OF ERROR.**

The assignments of error appear in the Record, on pages 261-3. Summarized, they include suggestions of the following specific errors:

1. Dismissal of the petition.
2. Denial of a preliminary injunction.
3. Holding that the order of March 28, 1923, constitutes a sufficient "tentative valuation," within the statutory definition.
4. Holding that the Commission is not required to report original cost to date of property other than land in each "tentative valuation."
5. Holding that the Commission is not required to report original cost of all lands, rights of way and terminals in each "tentative valuation."
6. Holding that the Commission is not required to report other values and elements of value in each "tentative valuation."
7. Holding that the Commission is not required to report the several analyses specified in the Valuation Act in each "tentative valuation."
8. Holding that the Commission is not required to report the original cost and present

value of all non-carrier property in each "tentative valuation."

9. Holding that the Commission is not required to report the value of the property of each carrier as an whole in each "tentative valuation."

10. Holding that the Commission is not required to report the value of the property in each State in each "tentative valuation."

11. Holding that the Commission is not required to include in the "tentative valuation" of appellant The Delaware and Hudson Company, the value of 35.01 miles of its railway, between Carbondale and Jefferson Junction, Pennsylvania, and that the Commission may exclude from the "tentative valuation" other railway property and properties used for common carrier purposes by appellants.

12. Holding that the Commission is not required to consider the prices existing and current on the valuation date in arriving at any "tentative valuation."

13. Holding that the Commission is not required to ascertain the actual amount of working capital in use for common carrier purposes on the valuation date and include such working capital in each "tentative valuation."

14. Holding that appellants, and each of them, were not injured by the order of March 28, 1923.

V.

ARGUMENT.

Four propositions will be presented and discussed, as follows:

1. The order of March 28, 1923, does not comply with the Valuation Act.

2. The Interstate Commerce Commission having refused and omitted to comply with the Valuation Act, its order of March 28, 1923, is illegal and void and cannot take the place of a lawful "tentative valuation" in the further process of valuation of appellants' properties which is prescribed by the law.

3. Appellants would be substantially injured if the order of March 28, 1923, should be permitted to operate as a "tentative valuation" in the further process prescribed by the Valuation Act.

4. This is a suitable proceeding in which appellants are entitled to relief against the order of March 28, 1923.

The foregoing propositions will be considered in their order.

FIRST.

The order of March 28, 1923, does not comply with the Valuation Act.

Failure to comply with the law, *i. e.*, the Valuation Act, is admitted by the Record on Appeal.

Such failure, amounting to refusal to attempt or perform or report things which the statutes specifically commands shall be performed and reported, is alleged in appellants' petition in respect of numerous requirements of the law.

Appellants' petition alleges, not merely omissions and neglect to comply with the law, but numerous specific *refusals* to do and to report the things which the law specifies (for such *refusals* and omissions, see paragraphs VI, VII, IX, X, XI, XII, XIII, XIV, XV, XVI, *R.* 6-10; for *another omission*, see paragraph VIII, *R.* 7).

These well-pleaded facts are admitted by the motions to dismiss, filed, respectively, by the United States (*R.* 233) and the Commission (*R.* 234)—*The Chicago Junction Case, Baltimore and Ohio v. United States*, 264 U. S. 258, 262-3; *Detroit United Railway v. Detroit*, 248 U. S. 429, 431; *Oklahoma Gas Company v. Russell*, 261 U. S. 290, 293.

As the statute plainly and in specific terms requires the things which the Commission refused, there is before this Court a record that *admits* numerous violations of the law from which all authority to make the order of March 28, 1923, must be derived.

As this court said in *Kansas City Southern v. Interstate Commerce Commission* 252 U. S. 178, a former case involving action of the Interstate Commerce Commission under the Valuation Act:

“* * * Congress indisputably had the authority to impose upon the Commission the

duty (duties) in question * * * 252 U. S. 178, 188.

It seems necessary to conclude, therefore, that in this instance, as in that then before the Court, the Commission misconceived its relation to the subject. The late Mr. Chief Justice White, for the Court, then said :

"We are of opinion, however, that, considering the face of the statute and the reasoning of the Commission, it results that the conclusion of the Commission was erroneous, an error which was exclusively caused by a mistaken conception by the Commission of its relation to the subject, resulting in an unconscious disregard on its part of the power of Congress and an unwitting assumption by the Commission of authority which it did not possess." 252 U. S. 178, 187-8.

In the case at bar, the Commission has, by its own admission, attempted to exercise, by its order of March 28, 1923, the "general power which the Act of Congress gave," *i. e.*, the power to make a "tentative valuation," but in the very act of doing so, has again committed the error of "disregarding the essential conditions imposed by Congress upon its exercise." Such a situation having appeared in the *Kansas City Southern Case*, *supra*, the Commission was required, in pursuance of the order of this Court, to correct its error, the conclusion of law being stated, in the opinion, as follows :

"Finally, even if it be further conceded that the subject-matter of the valuations in ques-

tion which the Act of Congress expressly directed to be made necessarily opened a wide range of proof and called for the exercise of close scrutiny and of scrupulous analysis in its consideration and application, such assumption, we are of opinion, affords no basis for *refusing to enforce the Act of Congress, or what is equivalent thereto, of exerting the general power which the Act of Congress gave, and at the same time disregarding the essential conditions imposed by Congress upon its exercise*" —252 U. S. 178, 188—Italics ours.

SECOND.

The Interstate Commerce Commission having refused and omitted to comply with the Valuation Act, its order of March 28, 1923, is illegal and void and cannot take the place of a lawful "tentative valuation" in the further process of valuation of appellants' properties which is prescribed by the law.

The Valuation Act provides for two distinct and separate stages in a carefully defined process leading to the determination, by the Commission, of the value of all the property of each carrier subject to the Interstate Commerce Act—*Paragraph (a), R. 2*. The first of these stages is concluded by the emergence of a "tentative valuation," which, thereupon, becomes the foundation of all subsequent proceedings, such subsequent proceedings based upon the "tentative valuation" constituting the second stage in the statutory process.

The term "tentative valuation" is closely defined by the statute (*Section 13a; paragraphs (a), (b), (c), (d), (e), and (f), including sub-paragraphs, First, Second, Third, Fourth and Fifth, R. 2-4*), the first five paragraphs leading to the declaration that the results obtained in compliance therewith "shall be tentative valuations"—*paragraph (f), R. 4*. The last cited paragraph so clearly indicates the purpose of Congress to require substantial compliance with the prescribed process and to define and prescribe what shall constitute a "tentative valuation" that it is here repeated:

(f) Upon the completion of the valuation herein provided for the Commission shall thereafter *in like manner* keep itself informed of all extensions and improvements or other changes in the condition and value of the property of all common carriers, and shall ascertain the value thereof, and shall from time to time, revise and correct its valuations, showing such revision and correction classified and as a whole and separately in each of the several States and Territories and in the District of Columbia, *which valuation, both original and corrected, shall be tentative valuations* and shall be reported to Congress at the beginning of each session"—*R. 4, Italics ours.*

Paragraph (f) is followed by paragraph (g) consisting of but forty-one words and devoted entirely to imposing upon carriers the duty to supply information and make required reports, and the latter by paragraph (h), which provides for serving each "tentative valuation" upon the carriers interested, upon the Governors of the States in which

the property affected may be located and upon the Attorney-General of the United States. This paragraph begins as follows:

"Wherever the Commission shall have *completed the tentative valuation* of the property of any common carrier, *as herein directed*
 * * *"—R. 4, Italics ours.

Obviously the words "*in like manner*," in paragraph (f), and "*as herein directed*," refer to the process prescribed in the paragraphs, (a) to (e), preceding paragraph (f). It is submitted that when any term, *e. g.*, the term "tentative valuation," is specifically defined in a statute, such definition excludes every other definition and nothing that substantially fails to satisfy the statutory definition can be allowed to take the place of the statutory concept.

In this instance, any other rule would seem plainly to violate the purpose of the Valuation Act which was to make the statutory "tentative valuation" the foundation for an equally definite process, prescribed by paragraphs (h) and (i), leading to determination of value or "final value." And it is to be noted that the carriers are not the only parties having an interest in the "tentative valuations." The Valuation Act recognizes the interest of the public and paragraph (h), as already noted, requires the Commission to serve its "tentative valuations" upon the Attorney General and upon Governors of States, as representatives of the public interest. Any of these public representatives, as well as the carrier, may protest the "tentative valuation" and all are entitled to be heard upon any protest that may be filed. The specific directions of

Congress as to what should constitute a "tentative valuation" were doubtless, in part, intended to protect the public, through these representatives of the public, by affording quite full and quite definite information as to the bases of the proposed ascertainment of value; their data, methods and results. Appellants, as carriers, are not entitled to complain on behalf of others, but they are entitled to what benefit they can derive from a lawful "tentative valuation," which as to them, must satisfy the same statutory definition and requirements which it must meet when at the same time offered to the Attorney General or to any Governor of any State.

Congress has, it is evident, prescribed and defined what a "tentative valuation" shall be and has done so for purposes that are not difficult to apprehend; the Commission has no power to depart substantially from such prescription and definition. The Commission's authority to make anything a "tentative valuation" must be conditioned and circumscribed by the Congressional grant of authority and the Congressional intent, and unless the order of March 28, 1923, satisfies the Congressional intent, the fiat of the Commission cannot make it that which it is not, a lawful "tentative valuation."

Paragraph (c) of the law (*R. 3*) is highly significant in that it amounts to a specific assertion of the Congressional purpose to fix with considerable strictness the scope of the Commission's inquiries as to value and the boundaries of its authority. "*Except as herein otherwise provided,*" says this paragraph, "the Commission shall have power to prescribe the method of procedure * * *, the form in which the results of the valuation shall be submitted and * * *."

It is clear from the decision in *Missouri ex rel. Southwestern Bell Telephone Company v. Public Service Commission*, 262 U. S., 276, that *no significant evidence can be excluded from consideration in valuation cases without vitiating the results*. Indeed, in the Valuation Act, Congress was very plainly providing for the compilation, for general use in all proceedings subsequent to the completion of the work, of all the evidence pointed out by the decision in the leading case of *Smyth v. Ames*, 169 U. S., 466.

"We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property"—169 U. S., 466, 546-7.

It was with direct reference to the foregoing, and similar judicial declarations, that the Com-

mittee of the Senate which recommended the enactment of the Valuation Act said:

“* * * the Committee proposes * * * to enable the Commission *to secure every element of the value of the property of the common carriers*, so classified and analyzed as to enable the commission and the courts to determine the fair value of such property for rate-making purposes.

“The courts from the first have used various terms descriptive of the values and elements of value to be determined as a basis for ascertaining the fair value of railway property. Some of these terms they have altogether rejected. Others have come to have an accepted meaning and significance by commissions and courts and are recognized as covering all the elements of value attaching to the property of common carriers for rate-making purposes. *When these values are once ascertained, each aids in correcting the other*, and is given such weight as it is entitled to in enabling the commission and the court to arrive at the fair value of the property of the carrier used for its purposes as a common carrier. These terms accepted by recognized authority are: (1) *The original cost to date*; (2) *cost of reproduction new*; (3) *cost of reproduction less depreciation*; (4) *other values and elements of value*—that is, intangible values.

“As amended by the Senate committee, *the bill provides in the first subdivision of Section 19a for ascertaining these values*”—Senate Report No. 1,290, Sixty-second Congress, Third Session, pp. 5-6, Italics ours.

Manifestly, the purpose of Congress in specifically directing the Commission to ascertain and report each of the several classes or groups of evidence severally indicated in *Smyth v. Ames*, *supra*, and also to investigate and report all other values and elements of value, and to accompany its report with analyses and reasons, included the control and supervision of the body entrusted with the direct and initial labor of valuation. Congress intended to know, and that the public and the courts should know, fully and in detail, how values were determined. As Mr. Commissioner Potter said in his concurring opinion in the *San Pedro, Los Angeles and Salt Lake Railroad valuation case*, 75 *I. C. C.*, 463:

"We must remember the spirit of the Valuation Act. The Congress did not think that the Commission would be all-wise. There was obvious unwillingness to leave broad powers to us without a way to know exactly how we function and what we do. The Valuation Act is a new procedure. It is largely experimental. It is quite likely that the Congress may want to change it. We are therefore directed to find the different values and the different elements of value and the differences between them and to analyze and explain fully our reasons. The important purpose in all this was to open the door to our minds and mental processes in order that the Congress and the public could see how we operate and thus determine whether we give to the Valuation Act the interpretation and construction which the Congress intended. The thought evidently was that the

Congress after seeing what we do under the Act might decide that it was necessary to alter it. In the early cases *what we do in fixing values is not nearly so important as to know how and why we do it. Utmost frankness and complete analysis are therefore due from us. Unless we fully explain our reasons for doing things*, I apprehend our report will be discredited and discarded"—75 I. C. C., 463, 577-8.

Attention will now be directed to some of the aspects in which the specific requirements of Congress seem to have been ignored or compliance expressly refused.

A. REFUSAL TO FIND ORIGINAL COST TO DATE OF PROPERTY OTHER THAN LAND.

The statutory provision is that the "tentative valuation" shall—

"report in detail as to each piece of property other than land, owned or used * * * the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation * * *"—Section 19a, paragraph (b), R. 2.

With regard to the property of The Delaware and Hudson Company, the following statement appears in the order of March 28, 1923:

"*Original cost to date.* The original cost to date of the common carrier property of the

carrier cannot be ascertained *owing to the inadequacy of the records*”—*R. 22, Italics ours.*

Similar statements with regard to property of other petitioners appear, in the order—*R. 35, 49, 45, 48, 51, 54, 60, 63.* Elsewhere in the order the statement as to the property of The Delaware and Hudson Company is repeated, in modified form, as follows:

“The original cost to date of the common carrier property owned and used by the carrier cannot be determined *from the obtainable records*”—*R. 101.*

See also, *R. 119, 122, 125, 128, 130, 133, 139, 149, 171, 173, 177, 179, 182, 192, 195, 205, 218, 221, 225,* for similar statements.

Characteristic terms in the quoted statements are italicized, in order to call attention to the fact that the Commission has not said that it *cannot* ascertain original cost to date, but has said, only, that *it will not do so, unless it can perform the task without resort to any evidence not found in accounts or similar records.* The language used by the Commission varies from time to time, but it always expresses refusal to do what Congress required unless this one class of evidence is found. At one place in the order, it is “inadequacy of the *accounting records*” (*R. 35*) that is set up as a barrier to compliance with the Congressional purpose; at another it is, “the absence of the accounting records of its predecessors and those of the contractors who constructed the original road” (*R. 119*); at still another the difficulty is that the

fact "can not be definitely ascertained" (*R. 130*), for similar reasons, and, again, it "cannot be fully ascertained owing to the absence of the accounting records prior to January 1, 1888, and those of the contractor who constructed the original road"—*R. 218*.

The foregoing indicate clearly that the Commission refused to consider any evidence outside of the class suggested. Appendix 3, of the decision of the Commission in the *Texas Midland valuation case* (75 I. C. C. 1, 108), was, however, made a part of the order of March 28, 1923, by reference (*R. 64*; the citation in the *Record* is 1 *Val. Rep.*, 1, 108, but no such report was ever published and the citation finally adopted is 75 I. C. C. 1, 108, as given), and definite and specific refusal to find original cost to date, except in the limited class of cases in which it can be established by accounts or similar records, is thus brought into the instant proceeding. The Commission, in the *Texas Midland case*, said:

"As the Act is interpreted by the Commission original cost is a fact, to be determined from the best evidence available in each case. The cost of reproduction new is of necessity an estimate, * * *. Depreciation is necessarily an estimate, * * *. But these properties have been actually produced in the past and their production has cost a given amount of money. Original cost can, where the records suffice therefor, be exactly known, and it is in that sense that these words are understood by the Commission"—75 I. C. C. 1, 176, *Italics ours*.

The foregoing was referred to, and the doctrine which it contains was re-affirmed, in denying the petition of National Conference on Valuation of American Railroads, which prayed the Commission to ascertain and report original cost in all its "tentative valuations"—8 $\frac{1}{2}$ I. C. C., 9, 10. The Commission said:

"In our report in *Texas Midland Railroad*, 75 I. C. C., 1, we set forth sufficiently our interpretation of the requirement of the Valuation Act with respect to the reporting of original cost to date"—8 $\frac{1}{2}$ I. C. C., 9, 10.

A later expression found in a decision rendered on July 5, 1924, is as follows:

"* * * records are not obtainable which would enable us to ascertain the original cost to date of the property as a whole"—*Ann Arbor Railroad*, 84 I. C. C., 159, 169.

In other words, the Commission has concluded, *as a matter of law*, that when Congress required, *in the same sentence*, the ascertainment of the three facts of (1) original cost, (2) reproduction cost and (3) depreciation, it was intended that all possible evidence was to be used to determine two of these facts and only one class (accounting records) as to the first of them. This strange theory of statutory interpretation is refuted by the Committee report and the attitude of Congress when the Valuation Act was adopted. It reads into the law a provision excluding competent evidence, one which the Congress might have put there but did not put there—*Michaelson v. United States*, U. S., , decided on October 20, 1924.

The Commission itself had recognized, long prior to this enactment, the necessity and propriety of resorting to expert testimony, and the estimates of experts, for reinforcing the accounting records, in the determination of original cost. In the Commission's first report on Statistics of Railways, its Statistician, the late Professor Henry C. Adams, said:

"Under such circumstances *the need of an estimate by competent authority*, free from outside influences and clothed with ample power for the investigation was recognized as imperative. Such, without doubt, was the purpose of Congress in demanding information respecting the 'cost and value of the carrier's property, franchises, and equipment'."—*Statistics of Railways in the United States, 1888; Interstate Commerce Commission, p. 6*, Italics ours.

Dr. Robert H. Whitten in his Supplement, Section 1016, page 835, anticipates resort to estimates of cost in cases in which the records are unavailable or incomplete:

"Assuming that existing accounts and records may be only partially relied upon, an estimate of actual cost can be ascertained by much the same methods as, and with greater accuracy than, an estimate of reproduction cost."

Honorable Judson C. Clements, then a member of the Interstate Commerce Commission, now deceased, gave similar testimony before the Committee on Interstate and Foreign Commerce of the House of Representatives, on February 15, 1912, while Section 19a was in the legislative stage. He said:

"For a fair valuation, taking all those elements, I would think the right way to do it would be to have expert engineers and people who know what it takes to build a railroad, and what material is worth, help find out what it is worth, from time to time, for the ties, grading, moving of rock, filling of culverts, *aided by such historical information as they can get as to actual cost*, make a physical valuation of these things and then add to it any unearned increment value, and anything of that kind, separately stated, so that when it is all done Congress or the Interstate Commerce Commission, or any other agency of the Government that undertakes to deal with it with respect to the matter of rates, can, out of all these facts, consider in a conscientious and intelligent way what is reasonable and fair and just in regard to the rates, etc."—*Senate Report No. 1290, 62d Congress, 3d Session, p. 208, Italics ours.*

Senator Robert M. La Follette, of Wisconsin, who was the principal advocate of legislation for the valuation of railway property and made the Senate report in favor of the enactment of Section 19a (*Senate Report 1290, 62d Congress, 3d Session*), produced two expert witnesses before the Committee on Interstate Commerce of the Senate, both of whom stated that it would be necessary to resort to expert testimony and estimates in order to establish original cost. One of these, Professor Bemis, answering Senator La Follette's inquiry whether original cost could be obtained by exclusive reliance upon the books, *i. e.*, in the manner which the Commission now contends is the only permissible manner, said:

"You cannot get it from the records that have been burned for example, but you can get information of similar material—rails, for example, excavation, etc.—of that period and section of the country, frequently from other roads built about that time. Undoubtedly there are in every section roads whose books are preserved—going back to the early periods. Of course, the impossible would not be expected. *But it does not seem to me that it is wise to leave it entirely optional to the Commission.* It would be very easy for them to think—in view of the work involved—that this would be of less importance than some other matters. We do not know, however, how important it may become in any case that may arise or any court investigation afterwards; neither do we say that it is the only thing to be considered—not by any means—only that it should not be ignored. We ought to have the information"—*Testimony of Professor Edward W. Bemis; Senate Report No. 1,290, 62d Congress, 3d Session, p. 56.*

And, continuing his testimony, Professor Bemis quoted an eminent engineer of long experience in valuation work, Mr. Henry L. Gray, of the State of Washington, as follows:

"The writer affirms that the preparation of the statement of actual cost is both possible and necessary, and never in a single instance has he failed to obtain it. No more pitiful spectacle can be afforded than by an engineer attempting to say what a thing should cost, yet calmly indifferent to and ignorant of what

it actually did cost"—*Quoted by Professor Edward W. Bemis; Senate Report No. 1,290, 62d Congress, 3d Session, p. 55.*

Professor Bemis described the extent in which such estimates are useful, in the following:

"In all the rate cases of municipal utilities we have always gone to the books of the companies to find what they show as to actual cost, using estimates only where vouchers failed, holding that vouchers are always better than estimates"—*Testimony of Professor Edward W. Bemis; Senate Report No. 1,290, 62d Congress, 3d Session, p. 56.*

Professor Commons, the second expert called by Senator La Follette, in the same investigation, said:

"But if we go back to the principle of getting at the original cost, taking up the actual history of the property in question and inquiring from its books—and, if they are not available, from comparisons with adjoining property at the time when the acquisition was made—we could find what was the original cost or price to the corporation in the acquisition of this right of way and terminals"—*Testimony of Professor John R. Commons; Senate Report No. 1,290, 62d Congress, 3d Session, p. 101.*

The principle suggested by Professor Commons, of resort to comparative data, is frequently recognized in judicial proceedings with regard to

valuation. Attention is suggested to *O'Keefe v. United States*, 240 U. S., 294, and to *Louisville and Nashville Railroad v. United States*, 238 U. S., 1, in the latter of which it was said that :

"While some elements of value are fixed, the market price of property and work is affected by so many and such varying factors as to make it impossible to lay down a rule by which to determine what any article or service is worth. But one of the most common measures by which to value the property or service of A is to compare it with the amount charged for the same thing by B, C and D"—*238 U. S., 1, 11.*

Senator La Follette, in the report recommending the enactment of Section 19a, clearly stated the importance of original cost, as follows :

"Existing railroads have actually been built up through a series of years. The construction has been piecemeal and has advanced with the growth of the business. *The original cost to date*, will, at every stage of construction, take account of the prices paid at the time for property, material and labor; the amount of money paid out for legal services, engineers, architects, designers, management in organizing the corporation and constructing the road. It will show the exact amount received from the sale of stocks and bonds, and if the bonds have been sold at a discount, the price realized, and all the expenses of brokerage. It will show the amount paid in by stockholders. If stocks or bonds have been issued for property instead of cash, the value of the acquired

property will be ascertained. If the present corporation has acquired the property, or any portion thereof, at less than its physical value, or through some form of manipulation or combination or deception to the public, with a view of strengthening its monopoly character, and increasing its prospect for excessive value, or if its expenditures do not represent reasonable expenditures which ordinary business management would have approved, all of these facts will be disclosed by ascertaining the original cost to date. And it will be for the Commission and the courts to determine to what extent such investments will be allowed to be capitalized as against the public for rate-making purposes. In short, *the original cost to date will show the true investment*—*Senate Report No. 1,290, 62d Congress, 3d Session, p. 6.*

Honorable Clyde B. Aitchison, then chairman of the Oregon Railroad Commission, now a member of the Interstate Commerce Commission, was quoted by Senator La Follette in support of the same view, as follows:

“Any rule based on reproduction value less depreciation which ignores the item of original cost, additions and betterments, is not only economically and legally unsound, but is fraught with possibilities of greatest danger to the country”—*Senate Report 1,290, 62d Congress, 3d Session, p. 6.*

Mr. Henry L. Gray, engineer of the Public Service Commission of the State of Washington was also quoted as having said:

"This work (the ascertainment of the original cost to date) was of the maximum value, as it acquainted the engineers not only with the cost of the lines as a whole, but also with the cost of many isolated structures, such as bridges, buildings, etc. It also informed them as to the overhead cost, such as engineering, legal and general expenses, and other kindred items. With this knowledge it was a comparatively easy matter to reduce the cost of the different classes of property to a unit basis, such as the cost of bridges per linear foot, the cost of buildings per square foot of floor area. Being in possession of the detailed cost of all the modern structures, a most desirable guide was available in fixing the cost of reproduction. Without the knowledge of these costs as obtained it would have been utterly impossible to intelligently dispute the estimates later prepared by the railroads"—*Senate Report No. 1,290, 62d Congress, 3d Session, p. 6.*

Professor John R. Commons, of the University of Wisconsin, and a member of the Wisconsin Industrial Commission, was stated to have spoken before the committee of the importance of ascertaining these three items of cost: (1) Original cost to date (2) cost of reproduction new, and (3) cost of reproduction less depreciation, and saying:

"The court or commission must necessarily have these three items. It must have this engineering cost of reproduction; it must have the cost of the property less depreciation; and it must have its historical cost (original cost to

date) in order to get a true, fair or reasonable value. It may be that none of these three is reasonable, and it must check and compare in order to see where it is coming out. It could not properly make a mere arithmetical compromise or average between them * * * In the original cost everything that is involved in the question of cost to the present owner is included and can not be avoided. It is included, however, under this condition which the court carries through all of its reasoning on these questions, that that price or cost must have been reasonable. But if there has been fraud or misrepresentation or monopoly unwarranted and unjust and unfair to the public, that must also be considered. If, on the other hand, the company has been in severe straits, has not been earning dividends and therefore the purchase was a sacrifice sale or price or cost, that must be given due weight. In the treatment of those questions which have been more or less touched upon by the courts, the idea is to find what, under normal and reasonable conditions, would have been paid at that time. And I think that is the reason for using the term 'original cost' instead of 'actual cost' for the real thing that is meant to be determined is the actual cost at the time of acquisition. But actual cost may be very different from reasonable cost. It may have to be an estimated cost if the books are lacking; that is, the probable cost at that time. Consequently, the term 'original' I think, has come to be pretty well recognized by commissions, by engineers and accountants, as well as those cases which come up to the courts as a basis

upon which to ascertain the actual cost. The term 'original' is equivalent to 'actual' as against the speculative or hypothetical"—*Senate Report No. 1,290, 62d Congress, 3d Session, p. 7.*

And Honorable Milo R. Maltbie, then a member of the New York Public Service Commission, was referred to as having expressed the following opinion:

"I think altogether too much attention has been given to cost of reproduction and too little to investment (original cost to date)"—*Senate Report No. 1,290, 62d Congress, 3d Session, p. 7.*

Other evidence of the strong reliance placed upon original cost will be found in the same report at pages 54, 55, 80-81, 93, 153, 189 and 209. At page 93, Professor Commons said:

"I was going to show why this original cost notion is preferable to the reproduction idea. If you take the cost of reproduction based on the present prices, you must consider that those prices are changing. During the past ten or twelve years the cost of reproduction theory, when prices have risen thirty or forty per cent., would give a value probably greatly in excess of the actual or original cost when the property may have been constructed during eight or ten years of low prices. That would give an advantage to the corporation against the public. On the other hand, during a period of falling prices, which also is char-

acteristic of prices in general, especially so in going over the whole period of railroad history, taking original prices of rails at \$50 to \$100 and the present prices at \$28 to \$22, or whatever it may be, it would be to the disadvantage of the company and in favor of the public"—*Senate Report No. 1,290, 62d Congress, 3d Session, p. 93.*

At least four of the present members of the Interstate Commerce Commission consider that knowledge of original cost is essential in valuation proceedings and can be obtained. They have so stated in recent dissenting opinions. In *Kansas City Southern Railway, supra*, Mr. Commissioner Potter, with whom Mr. Commissioner Cox concurred, said:

"We must in all cases, as I see it, start either with original cost or reproduction cost"—*8 1/2 I. C. C., 113, 132-3.*

In the *National Conference on Valuation case, supra*, the same Commissioners united in the following concurring opinion, written by Mr. Commissioner Potter:

"There is, in my judgment, no serious difficulty in making the findings which petitioner suggests. The majority assumed that there is difficulty and takes far too seriously the burden of finding original cost. *Like most impossible tasks, it can be done. We are not directed to report book entries. We are to investigate and report a conclusion, and we are not relieved from that task if some one has made it*

more difficult by destroying records. We arrived at our conclusions the same way we arrived at other conclusions—by using the best competent evidence that is available. Where cost is the question and records are not available, evidence as to what the cost should have been is always competent. An estimate may, in fact, be much more reliable than a book-entry of actual payment”—8½ I. C. C., 9, 14, Italics ours.

In the same case, Mr. Commissioner McManamy said, concerning original cost :

“* * * this finding should be made from the best evidence available in each particular case. I am also of opinion that such a finding can be made without resorting to estimates to an extent that will materially impair its value”—8½ I. C. C., 9, 22.

The view of Mr. Commissioner Eastman, expressed in the same proceeding, follows :

“Nor do I entertain doubt that this information can be supplied with reasonable accuracy. Much of it we are now furnishing. So far as the reasonable cost of the railroad is concerned, *such records as are available will be a great help, and so far as they are lacking or misleading the deficiencies can be supplied by estimates.* It is, perhaps, somewhat more difficult to estimate cost of production at the time the property was produced than to estimate cost of reproduction as of any given date, but essentially the two processes are the same. Surely,

the public cannot be penalized because the railroads have failed to keep proper records"—84 I. C. C., 9, 21, Italics ours.

As Mr. Commissioner Aitchison, Mr. Commissioner Esch and Mr. Commissioner Campbell did not participate (84 I. C. C., 9, 23), in the case just cited, it seems that it was determined by eight Commissioners who were apparently equally divided on the principal question involved which was whether original cost can and should be ascertained and reported.

In its opinion in this case, the District Court expressed the conclusion that the "tentative valuation" of March 28, 1922,

"* * * comes as near to complying with the letter* as the facts permitted,—*in the Commission's opinion*"—295 Fed., 558, 561; R. 259, Italics ours.

Further inquiry might have suggested that, in such connections, the Commission uses the words "impossible" and "undesirable," as synonyms and interchangeably. That impossibility and undesirability were thus confused in connection with another aspect of valuation became of record in this Court in *Kansas City Southern v. Interstate Commerce Commission, supra*, in which it was determined that the Commission must do what it had repeatedly declared to be "impossible." Certainly the Commission has never said that it "cannot" ascertain original cost ("owing to the inadequacy of the

*Of the Valuation Act.

accounting records," etc.), in as strong terms as those which it used in saying, in the *Texas Midland case*, that the excess cost of acquiring railway rights of way over the average values for non-carrier purposes of adjacent lands, could not be ascertained. In that case the Commission said:

"Because of the *impossibility* of making the self-contradictory assumptions which the theory requires when applied to the carrier's lands, *we are unable* to report the reproduction cost of such lands or its equivalent, the present cost of acquisition and damages, or of purchase in excess of present value"—75 *I. C. C.*, 1, 62, Italics ours.

And again in the same case:

"The Commission has therefore felt justified in treating as practically impossible a compliance with this requirement of the statute."—75 *I. C. C.* 1, 168.

Yet the above refusal to find the excess cost of acquisition was examined, and all the disclaimers of capacity and excuses of the Commission were brushed aside and it was directed to perform its duty in the manner laid down in the statute. In declaring that the Commission must conform to the statutory direction, in terms already quoted herein (*supra*, 10-2) this Court also said:

"It is true that the Commission held that its non-action was caused by the fact that the command of the statute involved a consideration by it of matters beyond the possibility of

rational determination,' and called for 'inadmissible assumptions,' and the indulging in 'impossible hypotheses' as to subjects 'incapable of rational ascertainment,' and that such conclusions were the necessary consequence of the *Minnesota Rate cases*, 230 U. S., 352"—252 U. S., 178, 187.

Subsequent to the cited decision *the Commission performed that which it had declared impossible* in a large number of cases. Its *Thirty-fifth Annual Report* contains the following:

"Prior to November 1, 1920, fifty-five tentative valuation reports, representing the properties of seventy carriers, had been issued by us. The decision of the Supreme Court of the United States handed down March 8, 1920, referred to in our thirty-fourth annual report, required us to investigate and report 'the present cost of condemnation and damages, or of purchase, in excess of present value' of common carrier lands. *Having determined the excess cost of acquisition figures for the properties covered by the fifty-five tentative valuation reports*, a supplemental tentative valuation has been issued and served, in each case, showing excess cost of acquisition of the lands and final value figures"—*Report cited*, p. 55, Italics ours.

The District Court suggested (*R. 259*) in its opinion that the age of one of the appellants constitutes a special impediment to the ascertainment of original cost. It is true that the principal appellant operates under a legislative charter granted

by the State of New York on April 23, 1823 (*New York Laws, 1823, Ch. 238*). But it was chartered as a coal and canal company and railroad powers in the State of New York, in which 665 miles of its 788 miles of main track and 1,340 of its 1,716 miles of all track were located on the valuation date (*R. 17*), were not obtained until May 9, 1867 (*New York Laws, 1867, Ch. 841*). Appellants, however, do not understand the statute or the fundamental principles of the law of evidence in the manner suggested by this reference, however mistaken in fact, to the supposed length of the period to be covered by an inquiry concerning their original costs. Appellants suppose that the rules of evidence applicable in any situation derive quality from the particular task to which they are, in that instance, applied and that where, in the lapse of time or under other conditions, it is inevitable that evidence of the superior class or classes can no longer be available, evidence of the best class that is available is accepted. Thus whenever the ascertainment of any fact becomes requisite, the rules of evidence adapt themselves to the task to be performed. With regard to original cost, the task is the Commission's and it is its duty to obtain and utilize the best available evidence; in arriving at "tentative valuations," the task and function of obtaining information sufficient for compliance with the law are exclusively its own, they are not shared even to the extent of requiring hearings.

Appellants are not advised of any distinction that should make the requirement to ascertain original cost any less obligatory than the requirement considered in the *Kansas City Southern case, supra*.

**B. REFUSAL TO FIND ORIGINAL COST OF
COMMON CARRIER LANDS, ETC.**

The statutory directions are, that the Commission shall investigate and report, as part of the "tentative valuation," defined in the law:

"in detail and separately from improvements, the original cost of all lands, rights of way, and terminals owned or used for the purpose of a common carrier, and ascertained as of the time of dedication to public use. * * *"—*Section 19a, paragraph "Second", R. 3.*

A typical statement, so far as the order complained of indicates the attitude of the Commission, is found in Exhibit A to appellants' petition. It is as follows and relates to The Delaware and Hudson Company:

"The carrier owns and uses for its purposes as a common carrier 6,243.54 acres of lands. The total original cost of these lands cannot be ascertained *as the necessary accounting records are not obtainable*"—*R. 25, Italics ours.*

Similar declarations of purpose are to be found elsewhere in the order—*R. 35, 41, 49, 51, 55, 58, 61, 63.*

It will be remembered that appellant, The Delaware and Hudson Company, was chartered by an Act of the Legislature of New York, passed on April 23, 1823, to take over certain anthracite lands, portions of which are now doubtless included in its rights of way, yards and station lands, and,

of course, it has been acquiring lands ever since. The refusal of the Commission to find the original cost of these lands unless actual records of every transaction for an hundred years can be located and laid before its agents, is obviously tantamount to an arbitrary and general refusal to find the original cost which Congress said should be found.

The Commission's *specific refusal* is, however, made a part of the order of March 28, 1923, and of the instant proceeding, by the incorporation in the former, by reference (*R. 64*), of Appendix 3 to the *Texas Midland* decision, *supra*. The following is quoted from that decision:

"If it is impossible to show from the records of the carrier or from any other source what the carrier did actually pay for these lands at the time they were originally acquired, *no attempt is made to estimate such original cost*"—*75 I. C. C., 1, 164, Italics ours.*

Among the arguments offered in defense of the foregoing refusal to attempt to fulfill the Congressional requirement are the following:

"It is difficult to determine after a lapse of from ten to fifty years the acreage value of the right of way at the time it was acquired. The sources of information which are available upon this point are manifestly of doubtful accuracy. * * *

"The lands of a carrier were sometimes donated, sometimes purchased, sometimes condemned. In the absence of records there is nothing to show the proportion in which lands were acquired by these different methods.

"Even if it were known that a particular parcel was purchased it would be impossible to determine the purchase price even though it be assumed that the market value of adjacent lands is correctly known, for *it abundantly appears from observation and from testimony produced by the carriers that the price actually paid is not determined by the market acreage value, being usually more but sometimes less*"—75 I. C. C., 1, 164-5—Italics ours.

Attention is attracted by the concluding clause of the foregoing. Its tacit admission that the Commission had been able to acquire sufficient data for the comparisons of cost which it summarizes is a convincing, perhaps inadvertent, contradiction of the assertion that the Congressional mandate can not be carried out. But, epitomizing its objections and its determination not to do that which Congress had directed, the Commission, in the same case, continued:

"Plainly, an attempt to estimate original cost would in many cases involve, not the exercise of good judgment, but rather of pure speculation. The Commission has not felt justified in expending time and money in an attempt to make these estimates when they would be not only valueless but absolutely misleading when made"—75 I. C. C. 1, 165.

Quite obviously the value of work which Congress in its wisdom directs shall be done, is a question for Congress, not one for the Commission. The foregoing extract should, however, be compared with the language, which it closely approxi-

mates, already quoted herein (*supra*, 35), in which the Commission declared its determination not to attempt the task which this Court, in the *Kansas City Southern case*, *supra*, subsequently declared that it must attempt. That case had an instructive sequel, already noted herein (*supra*, 36), in that the Commission thereupon proceeded to accomplish, and did accomplish, the task which it had declined and had declared impossible.

What has been said with reference to the practicability of establishing the original cost of property other than lands by means of expert testimony is applicable, *mutatis mutandis*, to original cost of lands. The arbitrary character of the refusal of such testimony is especially evident in view of the fact that in all cases *the present value of the identical lands as to which this refusal is made has been claimed to be obtained upon the basis of the value of adjacent lands and the results are reported in the order—R. 25-6, 35-6, 41, 48, 51, 55, 58, 61, 63.* As these lands are regularly assessed for taxation and other data for comparing present with past values are readily accessible the so-called explanation is plainly without merit. There could not have been the least difficulty, had the Commission desired to obey the direction of Congress, in setting up regional index numbers, by which the original cost of any land, when such cost is not shown by the accounts, could be computed as a function of such present value. Properly supplemented so as to include cost of acquisition, condemnation, severance, damages, etc., this method would seem to meet the requirements of the Act.

C. REFUSAL TO FIND VALUE OF THE PROPERTY AS AN WHOLE AND BY STATES.

On this subject the statute reads as follows:

"Except as herein otherwise provided, the Commission shall have power to prescribe * * * the form in which the results of the valuation shall be submitted, and * * * shall show the value of the property of every common carrier as a whole and separately the value of its property in each of the several States * * *"—*Section 19a, paragraph (c), R. 3.*

The order of March 28, 1923, contains a balance sheet (*R. 20-2*), reported as having been "stated by the carrier, as showing its financial condition on date of valuation" and in no way either sanctioned or criticized by the Commission, which shows assets of \$143,733,839.81, and liabilities, including capital stock but not including the credit balance carried in profit and loss, of \$125,244,230.16 (*\$143,733,839 minus \$18,489,609.65, corporate surplus, R. 22*). The "final value" stated for all the property for which any value has been determined by the Commission and reported in the order of March 28, 1923, is \$95,834,979 (*R. 31-2*), for common carrier property and \$3,181,358.41 (*R. 29*), for 1,023.93 acres of land classified as non-carrier, a total of \$99,016,337.41, or \$26,227,892.75 less than the excess of liabilities thus computed over the accumulated corporate surplus stated in the balance sheet. This comparison stands out in the so-called "tentative valuation" where it can have but one of two results, either it must (1) mislead

the unwary, or (2) establish the worthlessness of the methods; a lack of utility in the order of March 28, 1923, that must indubitably be attributed to the failure of the Commission to follow the direction of Congress and to value the property "as a whole."

The Commission was not ignorant of the existence of other property, the inclusion of which in its results would have obviated this complete inconsistency with the balance sheet. But it refused and omitted to value this other property, and its official cognizance of its existence, of record in the order, is confined to two short paragraphs which are quoted below:

"The carrier had recorded investments in other companies of a par value of \$53,577,137.56, which it carried at a book value of \$49,501,712.34"—*R. 29.*

"There is shown in Appendix 2, under the heading 'Miscellaneous Physical Property,' the sum of \$10,280,864.44 as representing a balance shown by the carrier's books, consisting of coal lands and other items named. *No part of this property is included in the property above reported as held for purposes other than those of a common carrier and investments in other companies*"—*R. 29, Italics ours.*

Appendix 2, referred to above is in the Record (*R. 86-230*) and all that it contains with respect to the above non-carrier property is found on a single page (*R. 106*), on which nothing appears that goes further than a mere recognition of the existence and ownership of this omitted property.

It must be concluded that its omission from the valuation was intentional and deliberate. The motions to dismiss admit the allegation of appellants' petition (*paragraph XII, R. 8*) that the Commission *refused* to comply with this requirement of the law.

The omission to classify the property by States was equally intentional. The order shows (*R. 16*), that appellants own or use property in the States of Pennsylvania, New York and Vermont, but there is no statement of the distribution among these States of even the property covered by the items aggregating \$99,016,337.41 (*supra*) that are given in the order—*R. 29, 31-2*. Partial and fragmentary allocations by States appear in the order (*R. 29-43*), but *there is no allocation to any State of any final value or aggregate value of property as an whole*. In the *Texas Midland* decision, *supra*, the Commission declared that it had determined not to make such assignments—*Appendix 3, 75 I. C. C., 1, 159-160*.

“Literally interpreted, the Commission is * * * required to show the property located in a particular State. If the property has no location it does not fall within the requirement; that is, the Commission is not required to create, nor would it be justified in attempting to create by any arbitrary rule, a location which does not in fact exist. *It has been determined, therefore, not to attempt to allocate by States property embraced in the equipment accounts, but to report that in one item as non-assignable*”—*75 I. C. C., 1, 159*, *Italics ours*.

It would appear, from the foregoing, that because of an observation that *some* equipment moves freely and frequently across State lines, the Commission declined to find the value by States of *all* equipment, although it must be assumed to know that locomotives are largely restricted to operating divisions which are very often wholly within single States and that nearly all passenger cars are assigned continuously to services between particular terminals, their "runs" in a great many instances being wholly within State boundaries. With regard to another class of property the Commission assumed a position that is even more palpably arbitrary and remarkable. This is shown by the following from Appendix 3 to the *Texas Midland* decision, *supra*, and, therefore, a part of the order of March 28, 1923.

"Carriers frequently own small amounts of property located off the line in States through which the railroad itself does not run. * * * This property is collected in one item and reported as non-assignable. * * *

"While a literal interpretation of the language of the Act might call for an assignment of this property to the State in which it is in fact located, it has been thought that a practical and sensible interpretation of the Act would not so require"—75 *I. C. C.*, 1, 160.

The practicability of compliance with the Valuation Act in this respect has been admitted in terms. The Commission has reported to Congress that values *can* be assigned to the property in different States. Under date of December 29, 1922, Mr. Commissioner McChord, then Chairman of the

Commission, and in his capacity as such speaking for the whole Commission, addressed a letter to the President of the Senate, from which the following is quoted:

"The Interstate Commerce Commission respectfully submits the following information in response to Senate Resolution 379, adopted December 15, 1922, * * *

"Up to the present time we have not undertaken to segregate by States the single-sum value of interstate carriers * * * In assembling data upon which the value of a given carrier as a whole is based, *we have collected the basic material from which information as to the values separately by States can be compiled*" —Senate Document No. 284, 67th Congress, 4th Session, pp. 1, 3-4. Italics ours.

In its latest *Annual Report*, referring to the above cited case, the Commission said, in part:

"We determined not to attempt to allocate by States movable property common to all the service, but to report that in one item as non-assignable. We have not allocated to States the general items of materials and supplies, working capital, or other elements of value without a fixed situs in any one State. *We have not attempted to break up by State lines the final single sum values found for carriers.*

"From time to time representations have been made to us asking segregation by States of all property and of the final single sum values. The National Association of Railway

and Public Utilities Commissioners has made *insistent representation* to us of the desirability of making such segregations. *At a conference last spring between a representative of the Commission and the Valuation Committee of that Association it was agreed that an estimate of the cost of making the segregation would be made* and the matter, in the form of a separate item of appropriation, presented to the Congress for the determination by it of the question of policy involved. This we have done, including in our 1924-25 estimates submitted to the Director of the Budget an item of \$100,000 separately stated to cover this work if it should be the desire of the Congress that it be done. We can not enter upon this work on our regular appropriation.

"The demand coming from the States seems to be the result not only of a desire or need for such segregation of value for purposes of transportation regulation but also of a desire on the part of at least a number of States to work out more equal and consistent taxation systems"—*Thirty-seventh Annual (1923) Report*, pp. 15-6, Italics ours.

Appellants consider that the authority and the duties of the Commission, under the Valuation Act, are derived from that Act and the will of Congress expressed therein; it is not understood that they expand or contract with the expressions or desires of other political or private agencies nor even with the rise or fall in the amount of an appropriation by Congress. It is submitted that the Commission's attitude in this matter presents still another instance of:

“* * * exerting the general power which the Act of Congress gave, and at the same time disregarding the essential conditions imposed by Congress upon its exercise”—*Kansas City Southern v. Interstate Commerce Commission*, 252 U. S., 178, 188.

D. REFUSAL TO INCLUDE ANALYSES AND REASONS.

Congress expressly directed the inclusion in each “tentative valuation” of several different analyses and specific reasons for differences, if they should be found, that it was evidently considered might or would usually occur. There are four such express directions in the paragraph beginning “First” (R. 2) and one in the paragraph beginning “Third” (R. 3). Thus, after requiring the report of (1) original cost to date, (2) cost of reproduction new and (3) cost of reproduction less depreciation, the former paragraph commands the inclusion in the tentative valuation of—

“an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any”—R. 2.

Following the foregoing, in the same paragraph, the Act requires the ascertainment of “other values and elements of value” and that the “tentative valuation” shall contain—

“an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values”—R. 2.

The last of these statutory requirements is in connection with the direction, in the paragraph beginning "Third," to report separately the value of non-carrier property and is that, as to this value, the "tentative valuation" shall contain—

"an analysis of the methods of valuation employed"—*R. 3.*

The Commission has not *overlooked* these requirements as to analyses and reasons. On the contrary, it has called attention to them while expressing its refusal to follow the law, and its determination to evade its evident purpose. The order of March 28, 1923, which is here in issue, contains nothing in the way either of analyses or reasons and no references to these subjects, except the following, which occurs under the heading "In General"—*R. 64.*

"Reference is made to Appendix 3 of the report in *Texas Midland Railroad, 1 Val. Rcp., 1, 108,** which is hereby made a part hereof, for a statement of the methods employed and of the reasons for the differences between the various cost values reported"—*R. 64.*

The report referred to in the foregoing was rendered on July 31, 1918; the order from which the reference is quoted is that here in issue, entered on March 28, 1923. It appears that *the Commission's claim is that it formulated and published the analyses and reasons which Congress required to be a part of any "tentative valuation" of*

*The present reference to the report cited is 75 I. C. C., 1.

appellants' properties, just four years, eight months and twenty-seven days before it was ready to declare the figures and amounts to which these analyses and reasons appertain. Perhaps the absurdity of this evasion is established as fully as in any other way by the fact that four and one-half pages of the Appendix thus relied upon (75 I. C. C., 1, 168-172) are devoted to discussion of reasons for not complying with the statutory direction, since repealed, to ascertain the excess cost over the value of adjacent non-carrier lands of the acquisition of lands for rights of way and terminals. These reasons may have had some importance on July 31, 1918, when the *Texas Midland* decision was rendered; they lost most of that importance when the Supreme Court held, in *Kansas City Southern Railway v. Interstate Commerce Commission*, *supra*, that they would not suffice to justify the Commission in refusing obedience to a plain direction of Congress; they lost part of the remaining importance when the Commission, subsequent to the *Kansas City Southern* decision, accomplished in a large number of cases (*supra*, 36, 41) all it had thus said could not be accomplished, and, finally all importance disappeared when Congress, on June 7, 1922 (*42 Stat.*, 624), repealed the requirement which they discuss. It is certainly not surprising to find that in many other respects the analysis presented nearly five years earlier in deciding the *Texas Midland* case is inappropriate and inept in connection with the order of March 28, 1923.

Moreover, a plain and definite promise made by the Commission, in the decision of July 31, 1918,

has not been kept in the order of March 28, 1923. The "tentative valuation" before the Commission in the *Texas Midland* case did not state an aggregate value for all the property owned or used by the carrier *for its common carrier purposes*. In that case the Commission declared that it would include in all future "tentative valuations," "a single sum as the value of the property owned or used for common carrier purposes." Such a "single sum," or aggregate "final value," of common carrier property is to be found in the order of March 28, 1923, now in issue and affecting appellants—*R. 31-2*. But there is no analysis of the methods of valuation employed in arriving at this aggregate (the sum is \$95,834,979, and it is believed by appellants to be grossly inadequate), nor is any analysis of the methods employed in any case or at any time in arriving at any such total to be found in the Appendix to the *Texas Midland* decision which is incorporated in the order; naturally there could have been no such analysis in that case, for at that time there was no such "single sum" value or "final value" in existence, none had been made, no methods of making any had been developed, there was nothing of the sort that could have been the subject of analysis. The promise which has not been kept as to appellants, whatever may be the case as to another carrier, found in the *Texas Midland* decision, is as follows:

"When a finding as to a single sum value of the property is announced, such analysis of the methods by which it is arrived at and the reasons for the differences, if any, as is appropriate, will be presented"—75 *I. C. C.*, 1, 7.

If the foregoing has been performed as to the Texas Midland, there is still, not even by reference or in the most superficial form, any such analysis, or alleged analysis, in the case of these appellants. Now this figure of \$95,834,979 is the most important contained in the so-called "tentative valuation" of March 28, 1923. If it should stand, it might ultimately have to be substituted, as of its date of June 30, 1916, in the principal appellant's balance sheet for whatever figures now represent in that fundamentally important account the value of its railway and appurtenances.

Congress unquestionably intended that this appellant and the public should have a full and detailed analysis of this total, with definite reasons for all differences between this most significant figure and the so-called "cost values." It is to be noted that Congress was not willing to leave the public interest in the "tentative valuations" wholly to the protection of the Commission, but provided that these valuations should be served on the Attorney General of the United States, Governors of States and others, all whom are authorized to protest the results—*Section 19a, paragraph (h), R. 4*. And, equally Congress intended and planned that appellants should be given this analysis and these reasons, for their protection. The Commission has declined to formulate and declare these reasons and its resolution to withhold them was deliberate. It was plainly intended that the appellants should be left without information as to how this sum of \$95,834,979 was obtained. Yet if appellants are required to proceed as though the order of March 28, 1923, conformed to the statute, they will have to predicate their criticism of this sum

upon a protest and the law restricts the hearing to matters relevant to such a protest—*R. 4-5*. The purpose of the Commission to impede attack upon this aggregate by denying to appellants and to the public the information that Congress provided they should have is declared, almost boldly, by *the vague and meaningless formula* adopted in the order of March 28, 1923, and repeated therein in stating the figure declared as "final value" for each of the appellants. This extraordinary formula is as follows:

"Final Value—After careful consideration of all facts herein contained, including appreciation, depreciation, going-concern value, working capital and all other matters which appear to have a bearing upon the values here reported, the values, as that term is used in the Interstate Commerce Act, of the property of the carrier, owned and used, owned but not used, and used but not owned, devoted to common carrier purposes, are found to be as follows:"

The foregoing appears in the order many times (*R. 31-2, 43, 46-7, 49, 52, 55, 58, 61-2, 64*), without substantial change, each appearance in connection with the statement of a different aggregate, ranging from \$82,000 in the case of appellant The Ticonderoga Railroad Company (*R. 58*) to \$95,834,979 in the case of appellant The Delaware and Hudson Company (*R. 31-2*). This ingenious verbal device for the maintenance of obscurity has been repeated in many other valuation cases. See *Evanville & Indianapolis Railroad*, 75 I. C. C., 443, 451-2; *San Pedro, Los Angeles and Salt Lake*

Railroad, 75 I. C. C., 463, 609; *Atlanta, Birmingham & Atlantic Railroad*, 75 I. C. C., 645, 689; *Florida East Coast Railway*, 84 I. C. C., 25, 60; *Kansas City Southern Railway*, 84 I. C. C., 113, 145; *Texas Midland*, 84 I. C. C., 150, 157; *Ann Arbor Railroad*, 84 I. C. C., 159, 179; *Danville & Western Railway*, 84 I. C. C., 227, 239; *Southern Railway Company in Mississippi*, 84 I. C. C., 253, 264; *Borddon Railway*, 84 I. C. C., 277, 282-3; *Wood River Branch Railroad*, 84 I. C. C., 289, 293; *Rhode Island Company*, 84 I. C. C., 299, 302; *Durham & South Carolina Railroad*, 84 I. C. C., 313, 321; *Knoxville, Sevierville and Eastern Railway*, 84 I. C. C., 329, 335; *Hoosac Tunnel & Wilmington Railroad*, 84 I. C. C., 343, 348. Aside from the foregoing, which are *all the cases* in which the value of all common carrier property has been stated as a single aggregate in decisions rendered upon protests to "tentative valuations," the same formula, or practically the same formula, has been used in every "tentative valuation" so far promulgated by the Commission. The common judgment and experience of mankind warrant the statement that such a formula is never resorted to save (1) to conceal thought or (2) to cover the absence of thought. The view of two Commissioners, expressed in a dissenting opinion, is that the judgment as to value was "a coincidence of result and not of thought"—*Kansas City Southern Railway*, 84 I. C. C., 113, 127. The Commissioners quoted (Mr. Commissioner Potter and Mr. Commissioner Cox) have also referred to the absence of analysis as producing—

"clouds of mystery over all we do"—84 I. C. C., 25, 44;

"wasteful uncertainty"—84 *I. C. C.*, 25, 44;

"the fog for which we are responsible"—84 *I. C. C.*, 25, 45;

"a jumble of guesses"—84 *I. C. C.*, 113, 130;

"a jumble of elements and considerations which we do not understand"—84 *I. C. C.*, 9, 17.

And Mr. Commissioner Eastman, dissenting in the *Kansas City Southern Railway case*, *supra*, in which the formula was used, said:

"No attempt is made to chart the path by which the conclusion is reached or to indicate the weight given to any particular fact. A quite different sum might be substituted, as the value for rate-making purposes, without changing in any way the discussion which leads up to and is presumably intended to support the finding"—84 *I. C. C.*, 113, 140.

Furthermore, in the case now at bar, except in this repeated formula, there is no reference in the order of March 28, 1923, to "appreciation" or to "going-concern value." Either the formula was developed for use in presenting some other "tentative valuation," in which appreciation and going-concern value were considered, and transferred to the order of March 28, 1923, without observing that the latter contains no other reference to either, or it was inserted merely to create uncertainty and to surround the declaration of value with an atmosphere of mystery and doubt.

All that has been said so far under the present sub-heading relates to the *analyses* required by the

statute. Reference to the extracts from the Act quoted in this connection will show that the "tentative valuations" are required also to contain "reasons" for certain differences, if they exist. Such differences do exist in the order of March 28, 1923, but it contains no reasons. The quoted reference in the order (*R. 64*), to *Appendix 3 of the Texas Midland* decision, refers the public and appellants to that Appendix for reasons as well as for analyses. That is to say for differences found or reported on March 28, 1923, between and among figures relating to the properties of appellants, all located east of the Allegheny mountains and north of Wilkes-Barre, Pennsylvania, the public and appellants are told to look to a document issued on July 31, 1918, relating to a small railroad that is wholly within the State of Texas. Moreover the values reported for appellants purport to be those of June 30, 1916 (*R. 16*) while the corresponding facts (as far as they are represented to correspond) for the *Texas Midland* purport to have been ascertained as of June 30, 1914—75 *I. C. C.*, 1, 80-91.

But, if the public or appellants should turn to the cited decision, they would find no reasons at all. Everything to be found by such effort is contained in the following paragraph:

"Reasons for the differences between values.
By the Act the Commission is required to report not only an analysis of the methods by which the several cost values are obtained but also the reason for their differences, if any. From what has been stated in this analysis of methods, it must be clear that the reasons

for the differences in amount between the various cost values reported, *i. e.*, the original cost to date, the cost of reproduction new, and the cost of reproduction less depreciation, are to be found in the essential differences in the nature of the inquiries which must be made in order to ascertain each of those cost values, respectively, based as they are and must be on varying assumptions, attended by varying conditions in which the actual and the hypothetical are contrasted and affected by fluctuations and trends in the prices of labor and material"—*Appendix 3, 75 I. C. C., 1, 181-2.*

The importance of such analyses and reasons as the law indicates has always been recognized. In the Commission's first report on *Statistics of Railways*, published in 1889, it was observed that—

"It was also felt that no investigation which published conclusions only, without disclosing the methods by which those conclusions were obtained, could ever gain the confidence of the public or serve the basis of further legislation"—*p. 6.*

The Senate Committee report, submitted by Senator La Follette, but representing an unanimous committee, recommending the enactment of Section 19a (*Senate Report No. 1,290, 62d Congress, 3d Session, submitted on February 20, 1913*), contains abundant evidence of insistence upon the analyses and statements of reasons which the majority of the Commission, over the sharp and strong protest of a minority that is scarcely inferior even in num-

bers, now refuses to supply. On its first page this report expresses the purpose of the Committee in the terms which follow:

“* * * the Committee proposes * * * to enable the Commission to secure every element of the value of the property of the common carriers, so classified *and analyzed* as to enable the Commission and the courts to determine the fair value of the property for rate-making purposes.”—*Report cited*, 5, Italics ours.

On page 195 of the same report the late Professor Henry C. Adams, for some twenty-five years Statistician to the Commission, is quoted as saying:

“More depends upon the analysis of the total value and of the definitions of the headings under which that total is classified than upon any other one factor.”

On pages 132-3, the following is reported:

“Senator La Follette: And is any other term required in order to enable the Commission to ascertain all of the values of railway property which may in any way be considered for the purposes of this bill—provided in the bill itself?

“Professor Commons: It seems to me it takes care of everything. It says first: ‘Shall value all of the property.’ Then it mentions certain items. Then it says: ‘Separately other values and elements of value.’ Then it requires the reasons for the differences between these several values and intimates, or makes

plain, I should think, that it is as comprehensive as any party to a suit would present to the Commission to be considered as an element of value, which should be taken into account. It is consistent, I take it, in the terms used with those which the courts now use and which are recognized."

On page 59, it appears that Professor Bemis said:

"The purpose there is to make sure that the details are given to the public as well as the summary. *We not only want a value but we want a detailed analysis of values.* We want the detailed values of the various elements. That runs through the entire bill, and it should be, I think, brought out on any occasion where there would be any doubt."—Italics ours.

And again, on page 74, the same witness being under examination by Senator Cummins, the following is reported:

"Senator Cummins: I am assuming, of course, that this bill is intended to furnish information upon any theory—

"Mr. Bemis: Exactly. That is my theory.

"Senator Cummins: At least, the theory held by reasonable men with regard to value. Therefore, I was asking whether it did, in your opinion, authorize the Commission to furnish the information along the line I have suggested, namely, a consideration of the value of the property, not according to its original

cost, not upon the theory of the cost of reproduction, but upon the theory of the value of the property as used for a specific purpose, namely, a railroad purpose?

“Mr. Bemis: I do not believe the Act is clear on that point. I think that is one of the points of discretion thrown upon the Commission. *Only they must state how they reached their conclusions*, for at the top of page 5 they are required to give ‘an analysis of the methods of valuation employed and of the reasons for differences between any such value and each of the foregoing cost values.’ I do not think the Commission’s hands are tied. They are obliged to make different valuations on different bases, but aside from ascertaining original cost of rights of way, they might take but one method of determining value, namely, reproduction value to-day, when you and I would think they should have taken some other.”—Italics ours.

The views of a majority of the Commission, which have led to the omission of analyses and reasons, so far as they have been made public, appear to have varied from time to time. In the *valuation case of Atlanta, Birmingham and Atlantic Railroad*, 75 I. C. C., 645, decided on July 20, 1923, they were indicated as follows:

“We have * * * incorporated herein by reference the analysis of methods published as Appendix 3 of the report of the *Texas Midland case*. In arriving at the final-value figure reported, all of the separate costs and values found have been considered, together with all

the underlying facts contained in the very voluminous record made in this case. In giving consideration to these evidential facts we have been mindful of the direction of the Supreme Court as to the scope of the inquiry necessary to ascertain such value. *Smyth v. Ames*, 169 U. S. 466, 546-7; *Minnesota Rate cases*, 230 U. S. 352. In the latter case the court said, at page 434, 'The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas but must be a reasonable judgment, having its basis in a proper consideration of all the relevant facts.' District Judge Booth, in *City of Winona v. Wisconsin-Minnesota Light & P. Co.*, 276 Fed., 996, 1001, said: 'That there can be no mathematical certainty in such a judgment goes without saying, nor does any formula exist which can be used in all cases.'

"No further analysis of the methods used in arriving at the single-sum value figure than has already been stated is necessary"—75 I. C. C., 645, 670-1.

Views radically divergent from the foregoing were expressed on behalf of four members of the Commission in the valuation case of *Evansville and Indianapolis Railroad*, 75 I. C. C., 443, decided only nine days earlier than the case above quoted. Mr. Commissioner Eastman, with whom Mr. Commissioner Potter and Mr. Commissioner Cox concurred, in a dissenting opinion, said:

"The report does not indicate in any way the method or process by which that value was determined, and yet this is the thing of crucial

importance in our valuation work. Fundamental questions of law and public policy are involved, many of which have been argued before us in contested cases, no one of which has yet been decided"—75 *I. C. C.*, 443, 445.

In a separate opinion, concurring in part with the majority, Mr. Commissioner Daniels, quoting the sentences of the statute by which the Commission is directed to give analyses and to state reasons, said:

"The method of reaching the valuation in this case, however, seems to me to be in disregard of the express mandate of the statute
* * * I am of opinion that the report is defective in failing to follow the explicit mandate of the statute"—75 *I. C. C.*, 443, 444-5.

In a more recent case, decided on January 15, 1924, the majority of the Commission appears to have abandoned the explanation of its omission of analyses, advanced in the earlier case (*supra*, 60-1) and to have reverted to the ground of impossibility so readily resorted to in other connections. The majority report includes the following:

"Where the duty of finding and fixing value reposes in a number of individuals, they may reach conclusions in which all are agreed, although each may give different weights to the various factors, and although they reach their individual conclusions by materially different processes. It is, therefore, not at all times possible, for a Commission to analyze its individ-

ual and composite processes of determination of values"—*Florida East Coast Railway*, 84 I. C. C., 25, 33.

What appears to be the same idea was expressed, in the *National Conference on Valuation Case*, *supra*, as follows:

"A detailed analysis of the method of arriving at a judgment would in the nature of things call for a description of the mental processes of those to whom is delegated that function, and in our case this would involve setting forth the mental processes of eleven men, who may have reached the same conclusion by different paths"—84 I. C. C., 9, 13.

See, also, *Second Texas Midland decision*, 84 I. C. C., 150, 155.

One defect in the foregoing reasoning is that it appears to rest upon the unsound postulate that the Commission acts upon its proper authority, and upon denial of the principle that it possesses no power save that conveyed by the Interstate Commerce Act, in this case by Section 19a of that Act. And Section 19a confers no power to value any property except in the manner therein prescribed, which requires, *inter alia*, analyses and reasons. It may be that the divergencies of view and of conclusions, presumably always attending the initial and early conferences of groups of men, were quite within the Congressional conception of the normal processes of the body upon which power was conferred, and that it was upon the resolution of these differences that the wisdom of the Federal

legislature relied as a guarantee of adequate deliberation and affording hope of the ultimate emergence of approximately accurate and satisfactory valuations. The consideration and discussion necessarily incident to an earnest effort at such a solution of differences would seem to justify anticipations of trustworthy results that could not rationally be based upon any mere agreement to adopt aggregates which the united wisdom of the valuing body would confessedly be unable to explain or to defend. In the cited case, Mr. Commissioner Potter, with whom Mr. Commissioner Cox concurred, strongly dissented from the view that analyses and reasons could not and should not be given. Their answer to the suggestion that eleven men, or Commissioners, cannot agree upon reasons and analyses is pointed and direct. They:

“* * * do not share at all the notion that it is not possible for a Commission of eleven men to announce principles. Most of the uncertainties that exist would be cleared away by finding the answers to a dozen questions or so, which would involve fundamental principles”
—*Florida East Coast Railway*, 84 I. C. C., 25, 45.

In another valuation case, these Commissioners, referring to the Commission, as an whole, said:

“* * * we have not equipped ourselves for intelligent work by the adoption of principles”
—*Kansas City Southern Railway*, 84 I. C. C., 113, 130.

Repeating, in a third case, their belief that the announcement of principles and methods would re-

move the greater part of the obstacles to agreement within the Commission, they said:

"If it be true that we are incapacitated because we are eleven, that may be a reason for recommending to the Congress that the work be taken away from us and given to fewer men. But it is no reason why the work should not be done"—*National Conference on Valuation, etc.*, 84 I. C. C., 9, 18.

The similarity between the formula adopted by the Interstate Commerce Commission (*supra*, 53) and that brought to the attention of this Court in *Bluefield Waterworks and Improvement Company v. Public Service Commission of West Virginia*, 262 U. S., 679, 688-9, will be noted. Effective judicial review may be impeded by the adoption of such a formula—See dissenting opinion of Mr. Justice Brandeis in *Southwestern Bell Telephone Company v. Public Service Commission*, 262 U. S., 276, 296-8; *Monroe Gaslight and Fuel Company v. Michigan Public Utilities Commission*, 292 Fed., 138, 143-4. That this formula and the refusal of analyses and reasons of which it is an incident, have been intended to accomplish such a result has been suggested by members of the Commission—See concurring and dissenting opinions in *Florida East Coast Railway*, 84 I. C. C., 25, 44-50; *Kansas City Southern Railway*, 84 I. C. C., 113, 134-9; *National Conference on Valuation, etc.*, 84 I. C. C., 9, 17-20. In the latter case, Mr. Commissioner Potter, in a concurring opinion, after referring to the rule in *Smyth v. Ames*, *supra*, 16, said:

"It was to prevent us from overlooking any of these elements and to force proper consideration of them so that our action might be reviewed and the law amended, if need be, that the Congress dealt so specifically in its instructions as to the findings we should make. Obedience to those instructions is not only due to the source of our authority but is essential to valid action"—*84 I. C. C., 9, 20.*

Mr. Commissioner Cox concurred in the foregoing. These Commissioners have also united in suggesting some of the reasons for making and publishing the analyses which they favor. One of these reasons is that such analyses would tend to strengthen the work of the Commission itself. This view was expressed as follows:

"In this way, an administrative body would assure consistency in its work, exhibit intelligent reasons for what it does, furnish opportunity for a review of its action by other tribunals and provide protection against its mistakes"—*84 I. C. C., 9, 17.*

Another reason expressed by these Commissioners is that the absence of analyses and reasons necessarily impedes judicial review which, they aver, ought to be facilitated. This has been expressed as follows:

"Our method is peculiarly unfair to the courts, for it throws burdens on them that are properly ours"—*Florida East Coast Railway, 84 I. C. C., 25, 44.*

"The first duty of a tribunal is to aim at just conclusions. The second is to so act that error will be discovered and corrected. No tribunal may, with propriety, act in such manner as to prevent the weighing of its reasons or the testing of its motives"—*National Conference on Valuation, etc.*, 84 I. C. C., 9, 20.

The same Commissioners have also expressed the opinion that the valuation work of the Commission itself is seriously impaired by the absence of analyses and reasons, owing especially to the fact that the onerous duties of the Commissioners make it impossible for them personally to acquaint themselves with the original and basic records. The following is from their dissenting opinion in the *Florida East Coast Railway case*:

"It is not possible for the members of the Commission to examine the record in these valuation cases. Under such circumstances, unless our reports clearly set forth and analyze the methods used in building conclusions, and show the treatment of the different elements, varying in different cases, that influence value, so that the report may be convincing in and of itself, even we, whose work the report is, can not have satisfactory reason for our action"—84 I. C. C., 25, 44, Italics ours.

Appellants submit that the views of these dissenting Commissioners are sound and accord with the intent of Congress as expressed in the statute. They refer, also, with confidence in its accuracy, to another statement in one of the dissenting opinions already quoted:

"Analysis, principles and rules could be stated. The case is peculiarly appropriate for such treatment and explanation of reasons"—*84 I. C. C.*, 25, 41.

The expressions of Mr. Commissioner Potter, concurred in by Mr. Commissioner Cox, and of Mr. Commissioner Eastman, with regard to the failure of the Commission to submit analyses and reasons, and with regard to other errors of omission, in their separate opinions in *National Conference on Valuation of Railways*, *supra*, are so significant that they are reprinted, together with a sufficient extract from the "majority report and opinion" (in which apparently but four Commissioners participated), that they have been reprinted as Appendix I to this brief, *infra*, 172.

E. REFUSAL TO REPORT "OTHER VALUES AND ELEMENTS OF VALUE."

The Interstate Commerce Act, by Section 19a, directs, with regard to the "tentative valuation," as follows:

"The Commission shall * * * ascertain and report separately other values and elements of value"—*R.* 2.

With regard to The Delaware and Hudson Company, the response of the Commission to the foregoing, contained in the order of March 28, 1923, is the following:

"No other values or elements of value to which specific sums can now be ascribed are found"—*R.* 32.

Identical statements with regard to the other appellants and the Plattsburgh and Dannemora (owned by the State of New York) also appear in the order—*R. 37, 43, 47, 49, 52, 55, 58, 62, 64*. This is another formula, repeated many times, not only in the order of March 28, 1922, now in issue, but in substantially all "tentative valuations" and in numerous cases in which protests to "tentative valuations" have been considered—See *Texas Midland Railroad, 75 I. C. C., 1, 68-9, 79; Winston-Salem Southbound Railway, 75 I. C. C., 187, 206; Kansas City Southern Railway, 75 I. C. C., 223, 316; Evansville & Indianapolis Railroad, 75 I. C. C., 443, 451*.

The terms of these disclaimers command attention. "No other values * * * are found," literally understood, means no more than that the Congressional direction has not been executed; "specific sums" cannot "now" be "ascribed," plainly suggests that they might be so ascribed at some other time or might be at this time if the investigation had not been neglected. The Commission certainly does not deny that "other values" exist or that it has capacity and means to investigate, ascertain and report them in obedience to the statute. Such a denial would be refuted by its own reports. Thus, in its *Fifth Annual (1891) Report*, the Commission, at page 6, said:

"An instructive comparison with the actual capitalization of railways is permitted by the table in the report showing the valuation of railway property computed on the basis of the amount of money which the property has actually earned for its owners during the year end-

ing June 30, 1890. If interest payments, and final net earnings available for dividends be capitalized at five per cent, it appears that, regarded as a five per cent investment, the value of railway property in the United States, judged from the operations of the year ending June 30, 1890, was \$6,627,461,140 which is equivalent to \$42,374 per mile of line. In the New England States, Group I, the value of railway property, considered as an investment, exceeds its capitalization, it being \$57,867 per mile of line; in the Middle States, Group II, the value of railway property is \$109,741 per mile of line, a sum slightly less than the actual capitalization; in all other parts of the country the valuation of railway property on the basis of actual earnings falls below the actual capitalization. In Group X, for example, where the capitalization is \$87,104 per mile of line, the valuation is \$22,762 per mile of line."

That there is an "other value" to be ascertained from consideration of the values of bonds and shares of stock is officially recognized by the Bureau of the Census, as shown by the following from one of its publications:

"The valuation submitted in this report may be properly defined as the commercial value of property used by railways in connection with the business of transportation. By 'commercial value' is meant the estimate placed upon the worth of property regarded as a business proposition * * *. The two fundamental considerations by which the market is in-

fluenced in placing a value upon property when bought or sold, are the expectation of income arising from the use of the property, and the strategic significance of the property"—*Bulletin 21, Commercial Valuation of Railway Operating Property in the United States; 1904; Department of Commerce and Labor, Bureau of the Census; p. 8.*

Reference to market prices has also been sanctioned by this Court, in *Taylor v. Secor*, 92 U. S., 575:

"It is, therefore, obvious that, when you have ascertained the current cash value of the whole funded debt, and the current cash value of the entire number of shares, you have, by the action of those who above all others can best estimate it, ascertained the true value of the road, all its property, its capital stock and its franchises; for these are all represented by the value of its bonded debt and of the shares of its capital stock"—92 U. S., 575, 605.

In its *Annual Report* for the year 1903, the Interstate Commerce Commission referred to "other values," in terms that at least suggest value arising out of present and prospective use, saying:

"An inventory and an appraisal of the elements that make a business profitable are as necessary as an inventory of the physical elements of its plant and equipment"—*Seventeenth Annual (1903) Report of the Interstate Commerce Commission, p. 31.*

Recognition of the "other value," that results from use is found, also, in the Commission's *Annual Report* for 1888, in which, at page 64, the following appears:

"The present value of a railroad property is necessarily very largely matter of opinion only; it depends upon a vast number of contingencies and uncertainties, a road apparently of great value to-day may soon become worthless by the opening of a competing line having superior advantages, or by the competitive struggles of other lines which operate to reduce the income of all; the value of a railroad largely results from the personal characteristics of its officials; the policy pursued by its directors, whether conservative and economical or aggressive and daring, is a great factor in the determination of the current value of the property; a railroad property is not necessarily worth what it would cost to replace it, and on the other hand, it may be worth very much more than that."

In striking contrast with the Commission's attitude toward "other values," under the Valuation Act, is this Court's definition of value in *International Harvester Company v. Kentucky*, 234 U. S., 216, where it is said:

"Value is the effect in exchange of the relative social desire for compared objects expressed in terms of a common denominator"—234 U. S., 216, 222.

And this Court has repeatedly recognized the "other value" arising from use, present and prospective, as paramount:

"But the value of property results from the use to which it is put and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use"—*Cleveland, Cincinnati, Chicago & St. Louis Railway v. Backus*, 154 U. S., 439, 445; quoted and reaffirmed, *Branson v. Bush*, 251 U. S., 182, 187.

The earlier of the decisions just cited contains a very apt illustration of the difference between the real value of two properties having identical physical elements and precisely the same cost and cost of reproduction new, with or without allowance for depreciation. It is as follows:

"Suppose there be two bridges over the Ohio, the cost of the construction of each being the same, one between Cincinnati and Newport, and another twenty miles below and where there is nothing but a small village on either shore. The value of the one will, manifestly, be greater than that of the other, and that *excess of value will spring solely from the larger use of the one than of the other*"—154 U. S., 439, 446, Italics ours.

Other expressions of similar character are frequent and a few of them are given below:

"The difference between a *dead* plant and a *live* one is a *real value*, and is independent of any franchise to go on, or any mere good will as between such a plant and its customers"—*Omaha v. Omaha Water Company*, 218 U. S., 180, 202, Italics ours.

"That there is an element of value in an assembled and established plant, doing business and earning money, over one not thus advanced, is self-evident. *This element of value is a property right*, and should be considered in determining the value of the property, upon which the owner has a right to make a fair return when the same is privately owned although dedicated to public use"—*Des Moines Gas Company v. Des Moines*, 238 U. S., 153, 165, *Italics ours*, quoted and reaffirmed, *Denver v. Denver Union Water Company*, 246 U. S., 178, 191.

As to value in use, see also:

- Monongahela Navigation Company v. United States*, 148 U. S., 312, 328;
- Adams Express Company v. Ohio State Auditor*, 166 U. S., 185, 219-226;
- Louisville & Nashville Railroad Company v. Greene*, 244 U. S., 522, 540;
- Cudahy Packing Company v. Minnesota*, 246 U. S., 450, 456;
- Union Tank Line v. Wright*, 249 U. S., 275, 282;
- St. Louis and East St. Louis Electric Railway Company v. Missouri*, 256 U. S., 314, 317-8;
- Omnia Commercial Company v. United States*, 261 U. S., 502, 513;
- Brunswick & Topsham Water District v. Maine Water Company*, 59 A., 537, 539;
- Cedar Rapids Gas Light Company v. Cedar Rapids*, 144 Iowa, 426, 120 N. W., 966, 48 L. R. A., N. S., 1025, 1031, *affirmed*, 223 U. S., 655.

The value of certain shares of the capital stock of the Grand Trunk Railway Company, of Canada, was the subject of an arbitration which was concluded by a decision rendered on February 7, 1921. Mr. Chief Justice Taft, not then a member of this Court, delivered a separate opinion from which the following has been taken :

"The whole stock of the railway is valuable or otherwise as the ownership and control of the physical property of the railway as a going concern in the discharge of its public duties will enable it to earn a sufficient amount to pay dividends on the stock. *We are, therefore, to capitalize its net earning capacity, present and potential, and fix the value of the stock on that basis.* Its earning capacity, present and potential, is what is now earned, and what it may be expected to earn under reasonably probable conditions. Net earnings are the revenue received less the operating expenses. What determines the revenue of a going railway are the amount of its business and the rates it can charge"—Italics ours.

Sir Walter Cassels and Sir Thomas White, the other arbitrators, in separate opinions, expressed the same view and all arbitrators appear to have considered that the values in issue were to be derived from the value of the railway system, as an whole, in use as a "going concern," diminished by capital obligations possessing rights prior to those of the various issues of capital stock.

This "other value," arising directly out of use, is recognized in the very recent decision in *South*

Utah Mines and Smelters v. Beaver County, 262 U. S., 325, rendered on May 21, 1923, in which this Court, speaking by Mr. Justice Sutherland, said:

"The value of property bears a relation to the income which it affords. If it be property whose production is uniform and of indefinite duration the capitalization of the net income derived from it at the going rate of interest, in the absence of a more certain method, will furnish a reasonable measure of the value"—262 U. S., 325, 330.

The Constitutional guaranty extends to the use of property as well as the property itself:

Northern Pacific Railway Company v. North Dakota, 236 U. S., 585, 595, 599, 600, 604;

Norfolk and Western Railway Company v. Conley, 236 U. S., 605, 609, 614;

Buchanan v. Warley, 245 U. S., 60, 75, 81-2;

Brooks-Scanlon Company v. Railroad Commission, 251 U. S., 396, 399.

Testifying before the House Committee on Interstate and Foreign Commerce, which was considering the measure that eventuated in Section 19a, Honorable Balthasar H. Meyer, now a member of the Interstate Commerce Commission and of its Division I, and one of those who participated in the entry of the contested order of March 28, 1923, said:

"My point is that there are other elements than values of physical properties, *which*, as

a matter of fairness, must be considered, but it may not be necessary for ordinary regulating purposes always to ascertain the 'fair value'—Senate Report No. 1,290, 62d Congress, 3d Session, p. 225, Italics ours.

Such assertions and arguments as the foregoing must have approved themselves to the legislative mind, for the report of the Senate Committee, already quoted, *supra*, 17, under the heading: "Other values and elements of value—that is, intangible values," says, *at page 8*:

"This classification provides for going-value, good-will value, and franchise value. Whether any or all of these values will be considered by the Commission or the courts in determining the fair value of the property, and, if so what importance shall attach to them, is a matter for the Commission and the courts.
* * * The Committee has, it is believed, provided for ascertaining every element of value which, upon recognized authority, should be considered."

In the *Texas Midland* decision, *supra*, the Commission said:

"* * * it is apparent that it was the intent of Congress to require a statement of all those costs, values, and other circumstances which might bear upon the value of the property, for rate-making purposes at least, and possibly for other purposes"—75 *I. C. C.*, 1, 66.

The foregoing was an obviously necessary conclusion from the proceedings and report of the Senate Committee, which, as already indicated

herein, very plainly show that the plan of the Valuation Act comprised a united and co-ordinated inquiry, every prescribed element of which was deemed in its own degree essential to the purposes the Congress intended to serve. It is inconceivable that it was ever intended, or imagined, that the administrative agency upon which Congress conferred authority to execute the plan, would assume the legislative power to rule out and exclude from every inquiry any of the categories of investigation which Congress designated. Yet this is precisely what the Commission has attempted, as evidenced by this Record, in the case of original cost to date (*supra*, 19, 38) and in the case of "other values and elements of value." Thus the Congressional will has been denied.

Mr. Commissioner Hall, Mr. Commissioner Potter and Mr. Commissioner Cox would apparently agree to the foregoing—See *concurring opinion of the first named and dissenting opinion of Mr. Commissioner Potter in Florida East Coast Railway*, 84 I. C. C., 25, 37, 46-8. In the dissenting opinion there is a partial summary of the data that should be included under this heading.

It should be borne in mind that appellants are not now here to ask a determination as to the value of their properties, either upon the basis of present or prospective use, or on that of any "other value or element of value" or upon any basis. On the contrary, they are here to ask that the Commission shall be required to conform to the law in the preparation of a lawful "tentative valuation" so that the determination of value may proceed in the manner prescribed and intended by Congress.

F. REFUSAL TO INCLUDE CERTAIN PROPERTY USED FOR COMMON CARRIER PURPOSES.

The words with which the Valuation Act begins contain the general mandate to the Commission; the balance of the Act supplies the details, definitions and limitations. These beginning words require—

*“That the Commission shall, * * * investigate, ascertain and report, the value of all the property owned or used by every common carrier subject to the provisions of this Act”—Section 19a, paragraph (a), R. 2.*

Thus the first words of the law require the inclusion of all property owned or used. Paragraph (b) provides that the tentative report shall contain certain data in respect of “each piece of property, other than land, owned or used * * * for its purposes as a common carrier”—*R. 2.* Similarly, the paragraph beginning “Second” calls for certain data concerning “all lands, rights of way, and terminals owned or used for the purposes of a common carrier” and that beginning “Third” requires facts as to property “held for purposes other than those of a common carrier”—*R. 3.* These categories clearly include all property that any corporation subject to the Interstate Commerce Act could own or use; the comprehensive and all-inclusive purpose of Congress is plainly revealed and cannot be questioned.

The Commission, in the order of March 28, 1923, and in other similar orders, has refused (*R. 8-9*),

to give effect to this purpose and has *set up a rule of exclusion of its own*, not founded upon any words to be found in the law, the effect of which, in the instant case, has been to deny to appellant The Delaware and Hudson Company any value on account of important and extensive railway property; including about *thirty-five miles of its main line*. Appendix 2 of the order of March 28, 1923, contains (*R. 113*), an incomplete list of the excluded common carrier property, no part of which is included or represented in any figure, amount or value to be found in the order—*Petition, XII, XIV; R. 8*. This list and the heading under which it appears are as follows:

"TRACKAGE RIGHTS: In addition to the property leased or operated as agent, the carrier is granted the use of the property of other companies, * * * as follows:

Name of grantor	Between	State	Miles
Boston and Maine Railroad	Troy and Eagle Bridge	N. Y.	22.04
	Mechanicville and Eagle Bridge	N. Y.	19.43
	Crescent and Coons	N. Y.	6.80
	Coons and West End Mechanicville	N. Y.	1.90
The Central Railroad Company of New Jersey	Hudson and Union Junction	Penn.	1.34
Erie Railroad Company	Carlondale and Jefferson Junction	Penn.	35.01
	Binghamton and Owego	N. Y.	22.00
Lehigh Valley Railroad Company	South Wilkes-Barre and Wilkes-Barre	Penn.	1.62
The Troy Union Railroad Company	In the City of Troy	N. Y.	2.03
Wilkes-Barre Connecting Railroad Company	Buttonwood and Hudson	Penn.	5.04
Total			117.21

It will be noted that the heading of the foregoing shows that the appellant possesses the right to use the properties enumerated and, also, that the Valuation Act requires, in terms, the valuation of "all the property owned or used" (*R. 2*), by each carrier subject to the law. The allegations of appellant's petition (*paragraphs XIII and XIV*), admitted as true by the motions to dismiss, are that *the Commission refused to include this property and that it is actually used by appellants for their common carrier purposes.*

Attention is especially invited to the sixth item in the foregoing list; namely, 35.01 miles of railway between Carbondale and Jefferson Junction, Pennsylvania, owned by Erie Railroad Company. The appellant The Delaware and Hudson Company enjoys the use of this part of its railroad under a contract running for an hundred years from January 1, 1898—*R. 8*. It is a part of the main line of the railway system operated by that appellant and is *the sole means by which it maintains access to the Anthracite Region of Pennsylvania, the source of almost half of its freight traffic.* It is used and actually traversed by a very large proportion of the tonnage which this appellant moves as a common carrier. But it is also used by Erie Railroad Company, for certain of its common carrier purposes; hence the Commission wholly excludes it from valuation as part of the property used by The Delaware and Hudson Company. This exclusion was not accidental or an oversight; it merely applied a settled policy of the Commission. This is shown by the following extract from the *Texas Midland* decision, *supra*:

"It often happens that a carrier which owns and uses its property gives to some other carrier a qualified use in that property in common with itself. Such use is generally denominated a trackage right, and is the right to use the tracks of the owner for a compensation usually varying with the extent of the use. Where such an arrangement exists as to property which is of sufficient value to be of significance the portion in which trackage or similar rights are granted is inventoried by itself and the fact and nature of the use described in the inventories both of the owner and the user.

"This will be made clearer by an illustration. The trains of the Texas Midland Railroad run from Paris upon the north to Ennis upon the south. Beginning at Paris the first thirty-seven miles of line are owned by the Texas Midland; the next fourteen miles between Commerce and Greenville are owned by the St. Louis Southwestern Railway Company of Texas, commonly known as the Cotton Belt; the remaining seventy-four miles are the property of the Texas Midland. It will be seen, therefore, that the use of this portion of the line between Greenville and Commerce makes up a part of the through line of the Texas Midland from Paris to Ennis.

"The portion between Greenville and Commerce is made a valuation section upon the Cotton Belt and the various costs are determined with respect to that valuation section and reported in detail in the inventory of the Cotton Belt. The inventory of the Texas Midland shows the fact of this use and the valuation report upon the Texas Midland gives the

terms and conditions of that use. The cost of reproducing this valuation section is not, however, carried into the used column of the Texas Midland.

"The reason for this is obvious. If this reproduction cost appears in the used column of the Cotton Belt and again in the used column of the Texas Midland, the cost has been duplicated. It has been the desire of the Commission to appraise all the carrier property operated by carriers subject to its jurisdiction, but to report that property but once. When the used column of all carriers covered by this appraisal is totaled, it should give the total reproduction costs of all common-carrier property in the United States without duplication. This cannot be done if the claim of the carriers that all property over which a particular carrier operates shall be included as used both by the owner and by the user.

"It is believed that the method adopted fully complies with the statute. For example, the portion of the Cotton Belt, above referred to, is inventoried. The fact of its use is referred to both in the inventory of the Cotton Belt and in the inventory of the Texas Midland. The conditions under which the use exists are set forth in detail both in the report upon the Cotton Belt and in that upon the Texas Midland. When in the valuation of these properties it becomes essential to know the cost of reproduction new or of reproduction less depreciation, the facts can be ascertained by reference to these reports; and the same of original cost if that can be shown. The physical property is not changed by this dual use. It can exist but

once. If a part of the cost of that property is to be credited to the Texas Midland by virtue of the fact that it operates its trains over it, a corresponding portion should be deducted from the cost of the Cotton Belt. This property is used but once for the benefit of the public and ought not to be reported as twice used—75 *I. C. C.*, 1, 123-4.

This policy of exclusion has been continued—*In the Matter of Making Inventories, etc.*, 84 *I. C. C.*, 1, 6; *Danville and Western Railway*, 84 *I. C. C.*, 227, 230; *Durham and South Carolina Railroad*, 84 *I. C. C.*, 313, 315-6.

Appellants' contention that the exclusion of all this property "used" by them for their common carrier purposes is a palpable violation of an unmistakable command of Congress, does not seem to be susceptible of contradiction. Congress directed the Commission to value the property of "every common carrier" and to "report the value of all the property owned or used" by "every common carrier"—*R. 2. There was no direction to avoid such duplication as that suggested in the foregoing*; if such duplication results from carrying out the will of Congress, that body must be assumed to have intended it, the Commission has no such responsibility. The Valuation Act contains no direction to make any aggregate in which such duplication could occur, although authority for such aggregations and necessity for them may be found in later legislation, notably in Section 15a; but nothing could be simpler than to guard against such duplications while complying fully with the law by valuing all the property "used" by each carrier and

including all such property in the valuation of each carrier, but making the requisite corrections whenever larger aggregates were attempted.

Attention is requested to the allegations of paragraph XIV of the petition (*R. 9*), which show similar refusals to value to the appellants other property also used for their common carrier purposes.

That appellants are entitled to have all the railway and railway property they use included in their "tentative valuation" is a necessary deduction from the decision of this court in *Groesbeck v. Duluth, South Shore and Atlantic Railway*, 250 U. S., 607, as well as from the express terms of the Valuation Act. In the cited case, it was said that:

"Every part of the railroad system over which the passenger is entitled by the Act to ride for a two-cent fare must be included in the computation undertaken to determine whether the prescribed rate is confiscatory. This is true, at least, in the absence of illegality or mismanagement in the acquisition or operation of the division in question; and of such there is not even a suggestion in the record"—250 U. S., 607, 612.

G. REFUSAL TO INCLUDE THE WORKING CAPITAL ACTUALLY OWNED OR USED, AS COMMON CARRIER PROPERTY.

Working capital, *i. e.*, cash and materials and supplies essential to the operation of a railway ex-

tensively engaged in interstate commerce, would seem undeniably to be property used for common carrier purposes, within the intendments of paragraph (k) of Section 19a. The Commission itself has said:

"The property of a railroad which is necessary in operation may be divided into two general classes—the plant itself and its operating assets. * * * Operating assets include materials and supplies and cash on hand"—*Texas Midland Railroad, 75 I. C. C., 1, 34.*

On June 30, 1916, the date of the "valuation" made by the Commission and reported in the order of March 28, 1923, The Delaware and Hudson Company had on hand and was using for its common carrier purposes \$1,332,542.44 in cash and materials and supplies on hand were worth \$2,323,040.89 (*R. 20*), a total of \$3,655,583.33—*R. 29*. The Commission, however, included only 60.05 per cent of this amount, or \$2,195,100, in the value which it assigned to the common carrier property—*R. 29*. This diminution of value was effected by arbitrary resort to and application of a formula which the Commission claims is adapted, not to the ascertainment of the actual working capital of any common carrier, but to estimating the working capital that every common carrier ought to have. That this method was applied, with the result of reducing the amount of appellant's working capital included in the value assigned is shown by the following extract from the order of March 28, 1923:

"The carrier owns and holds cash on hand and materials and supplies in the amount of

\$3,655,583. This amount is in excess of normal requirements for working capital *as determined in the manner outlined in Appendix 3*. Under the method there explained the re-adjusted percentage for this carrier is 13.4 which applied to annual operating expenses of \$16,381,569, closely approximating the trend for a period of five years prior to valuation date, results in the sum of \$2,195,100, the amount necessary for the carrier's use as working capital"—*R. 29*.

In view of the foregoing it is obviously desirable to turn to Appendix 3 (*R. 230*) of the order and ascertain precisely how the Commission contrived to produce this reduction in the value assigned to carrier property. Appendix 3 is, in full, as follows:

"Analysis of Methods for Determining Working Capital. Working capital is understood to include two parts: First, the investment in a stock of material and supplies and, Second, the cash necessary to pay the operating expenses incurred for common carrier service prior to the time when the revenues from that service are available.

"Considering that the revenues from service performed in any particular period lag behind the expenses incurred for the service within that particular period, the amount of cash working capital needed for operating purposes is the amount by which the matured operating expenses exceed that part of the accrued revenues applicable to operating expenses, which has been collected, has reached the treasury and has become available for paying bills.

"It is immaterial whether this fund of working capital is provided by the owners, or secured in part on occasion through bank loans, or in part by impounding that portion of maturing revenues which is applicable as a return on the property.

"A practicable way to determine the portion of expenses for service in any period that exceeds maturing revenues from such service will be to consider that, of all operating expenses for service in any period, there will be met from maturing revenues from that service a proportion that is equal to the proportion of all accrued revenues from service within the period that reaches the treasury within that period. The remaining proportion of operating expenses will be the measure of the cash working capital actually used.

"Consideration was given to the various factors in the relation between the available revenues and the expenses within any period. Also, consideration has been given to the requirements in the way of a stock of material and supplies. The factors affecting cash working capital are as follows: The relative amount of revenue from the various classes of service; the elapsed time from the beginning of such service to the receipt in the treasury of the revenue for the service, including, for prepaid freight, the time for movement of empty cars to the point of loading, the time consumed in loading and the time the receipts are in transit to the treasury, and, for C. O. D. freight, in addition, the time for movement under load, the time consumed in unloading and the credit period for payment of charges;

the relative amount of operating expenses for various purposes; and the elapsed time from the beginning of the accrual of such respective expenses to the time when they must be paid. The factors in most cases represent the experience of all Class I carriers and in a few cases consist of specially assembled data from the experience of territorially scattered carriers that represent over forty per cent of the operating expenses of all Class I carriers. For material and supplies, consideration has been given to the average book value of the stock carried by all Class I and Class II carriers on June 30, for the years 1914-1916, and to the fact that some part of this stock is held for additions and betterments and new construction and that some part represents more or less obsolete material. Considering these facts and reducing these data to an equivalent percentage of a year's operating expenses, the result indicates that the average requirements of carriers for operating working capital, including cash on hand and investment in a stock of material and supplies, is about 13.6 per cent of a year's operating expenses. But, since operating expenses for the year ended on date of valuation may be more or less than normal, the expenses for a period usually five years, preceding date of valuation, have been taken to determine the normal annual expenses as of date of valuation.

"In determining working capital for individual roads, consideration is given, so far as data obtainable from reports on file with the Commission apply, to the difference between the factors applicable to those roads and

the average of factors applicable to all roads as a whole, as hereinbefore mentioned. These differences are in respect to the relative amount of revenues from passenger and freight service, and the average haul of freight and the ratio between empty and loaded car movement in their effect upon the elapsed time before the revenues from each class of service are in hand.

"Under the law, only such cash and material and supplies as are used for common carrier purposes may be included in the value found for common carrier property. Since the above method reveals the amount actually so used, the remainder of such assets that may happen to be in hand because of various causes other than those lying in the performance of common carrier service must be considered for the purpose of valuation as 'held for purposes other than those of a common carrier.'

"If the amount of cash and material and supplies held on date of valuation is less than the amount determined by the above method, due to assistance from affiliated companies or to other special circumstances, the carrier's common carrier property of that kind cannot, of course be greater than the amount actually on hand. In such cases, the value found for working capital is that for the cash and material and supplies.

"This method does not lend itself to the determination of working capital for switching and terminal companies, whose operations and methods of financing them are unlike the operations and revenues therefrom of line haul

carriers. Therefore, some other method will be used in such cases—*R. 230-2*.

Attention is invited to the fact that the application of the foregoing formula to appellants resulted in an allowance, as working capital, of 13.4 per cent of annual operating expenses of \$16,381,569—*supra*, 87. The percentage stated in the formula is 13.6—*supra*, 89. In authorizing the Louisville and Nashville Railroad Company to issue a stock-dividend of \$45,000,000, the Commission stated that that railway might "properly capitalize" the sum of \$30,000,000 "for working capital, including material and supplies"—*Securities of Louisville and Nashville Railroad*, 76 I. C. C., 718, 724-5. The cited proceeding was decided on February 24, 1923. The report and opinion shows (*p. 725*), that the average cash actually on hand, plus the average value of materials and supplies on hand, for the two-years periods ending, respectively, with December 31, and September 30, 1922, aggregated \$28,119,552.11. It is also shown (*p. 724*) that the cash and materials and supplies on hand at the date of the latest balance sheet of record in the proceeding, amounted to \$28,259,969.84. That is to say, in the cited case, the Commission, not using its formula and as basis for authorizing a stock dividend, sanctioned the capitalization of an amount considerably in excess of the working capital actually in hand, while in the case of appellants it refused to include in the value of their carrier property any amount greater than 60.05 per cent of the working capital which it found that they had actually on hand on the valuation date. But this is not all. Reference to the latest report on railway statistics, of the

Commission (*Thirty-sixth Annual Report on the Statistics of Railways in the United States*), containing data to the end of the calendar year 1922, shows (*p. XCI*) that the operating expenses of the Louisville and Nashville for the calendar year 1923 amounted to \$109,865,090 and for the calendar year 1922 to \$99,600,025. The average of these totals is \$104,732,557.50. The sum of \$30,000,000, authorized to be capitalized for "working capital" is 28.64 per cent of this two-years' average of operating expenses. That is to say, the Louisville and Nashville was authorized to capitalize, for the purposes of a stock-dividend, a percentage of its operating expenses more than double the percentage allowed to appellants for working capital in their "tentative valuation" and a sum that is also more than double the amount indicated by the formula which the Commission has made public and appears regularly to be using in all its "tentative valuations." No criticism of the allowance in the *Louisville and Nashville case* is intended but it is significant that in undertaking to deal practically with a practical problem, the Commission was led to a result so widely different from that which would have followed the application of its theoretical formula. If the Louisville and Nashville's problem had been treated as appellants were treated, the sum allowed the former for working capital could not have been greater than \$14,034,162.70; what effect a reduction from \$30,000,000 to \$14,034,162.70 would have had upon the stock dividend appellants do not undertake to discover.

The formula referred to was applied in the valuation case of *Florida East Coast Railway, supra*,

over the objection of Mr. Commissioner Hall (84 I. C. C., 25, 37), Mr. Commissioner Aitchison (84 I. C. C., 25, 37), Mr. Commissioner Cox and Mr. Commissioner Potter (84 I. C. C., 25, 48), with the result of reducing the allowance for working capital from \$1,431,947, as it had been stated in the "tentative valuation" of that railway, to \$700,000 (84 I. C. C., 25, 31-3) and below a five-years' average of \$1,063,025—84 I. C. C., 25, 48. The formula is not applied, however, when its use would *increase* the allowance above the amount actually provided—*Knoxville, Sevierville and Eastern Railway*, 84 I. C. C., 329, 335.

For use of this formula, see, also:

Texas Midland Railroad, 84 I. C. C., 150, 153-4;

Danville and Western Railway, 84 I. C. C., 227, 231-2;

Durham and South Carolina Railroad, 84 I. C. C., 313, 317.

This arbitrary method was newly devised when the order of March 28, 1923, was entered. Previously the Commission had included the full amounts of cash on hand and the full value of materials and supplies carried in stock in the values assigned—*Winston-Salem Southbound Railway*, 75 I. C. C. 187, 190-1. The refusal to follow the former rule in the instant case marks a *further step in the effort to depreciate railway properties*. Obviously the rule applied in this case does not have any relation to actual working capital owned or used, was not intended to have any relation to such working capital and has no tendency to discover the real amount of such capital. Its sole purpose is to substitute the judgment of the Com-

mission for the judgment of the management of the carriers and to carry into the "final values," for rate-making purposes, not the working capital actually used, but the smaller totals with the use of which the Commission considers that continued operation would be possible. And the rule allows no margin for anticipation of future needs for supplies against rising prices or any deviation from the hard and fast dimensions of an arbitrary formula blindly applied without regard to particular conditions. There should be no place under the American system of government for such an arbitrary exercise of power and such substitution of the judgment of an administrative tribunal for the judgment of the managers of property is not permitted—*Southwestern Bell Telephone Company v. Public Service Commission*, 262 U. S., 276, 289; *Interstate Commerce Commission v. Chicago Great Western Railway*, 209 U. S., 108, 119-120.

H. REFUSAL TO APPLY CURRENT PRICES.

In obtaining cost of reproduction new, for the purposes of "tentative valuations," it is necessary (first) to inventory the property under valuation, and (second) to apply unit prices to the various and varied units listed in the inventory.

"When the engineering inventory is complete, it contains an enumeration of the units of all the property owned or used by the carrier for common carrier purposes, except land. In order to show cost of reproduction it is necessary to apply prices to these units"—*Ap-*

pendix 3, Texas Midland Railroad, 75 I. C. C., 1, 135.

The prices thus applied are intended to include cost of installation—*Texas Midland, 75 I. C. C., 1, 137.*

Appellants' properties were inventoried as of June 30, 1916, but the unit prices applied to these inventories are not the prices of that date nor those of the year 1916, but prices purporting to represent averages for a period of years, the duration of which is not stated, ending with June 30, 1914. It is alleged in the pleadings (*R. 9*) that *the prices thus applied were materially lower than those of June 30, 1916*, and the truth of this allegation is admitted by the motions to dismiss. It is similarly alleged and admitted that the Commission refused to apply the prices existing and current on June 30, 1916, the valuation date—*R. 9.*

The determination of the Commission to apply prices of dates other than the inventory dates except when the inventory was taken as of June 30, 1914 (it was taken as of June 30, 1916, in the instant case), was announced in the *Texas Midland* decision, as follows:

“Our inventories are taken as of different dates, but all prices are applied as of June 30, 1914. The first thought was to apply prices as of the date of the inventory in each case, but subsequent reflection led to the conclusion that this course could not properly be pursued”—*Appendix 3, 75 I. C. C., 1, 139.*

Even in making the foregoing statement of its purpose, a purpose never modified or abandoned, the Commission recognized that there had been great increases in prices and costs of installation since 1914. The *Texas Midland* decision was rendered on July 31, 1918, and in it the Commission said:

"The fluctuations in price which have occurred since June 30, 1914, illustrate and confirm this view. Many prices, especially of equipment, are to-day double those of 1914"—*Appendix 3, 75 I. C. C., 1, 140.*

In another valuation case before the Commission, that of the *Winston-Salem Southbound Railway Company*, 75 I. C. C., 187, decided on August 8, 1918, it was contended, on behalf of the carrier, that it had been injured by the application of 1914 prices, its inventory having been taken as of June 30, 1915. The Commission, although refusing to modify its rule that it would, invariably and regardless of the valuation date, apply the prices of 1914, recognized the fact that the prices of 1915 were materially higher than those used—75 I. C. C., 187, 192-3.

In a printed "Memorandum upon final value," by the late Charles A. Prouty, a former member of the Commission and its Director of Valuations in 1920, when the document was filed by him with the Commission, the following appears:

"The cost of reproducing a railroad today would be at least seventy-five per cent more than in 1914 and the cost of equipping it would be two and one-half times as much * * *

“* * * a value should be determined as of the valuation date of each property, applying prices of 1914 or normal prices, and to that value should be added the actual expenditures made by the carrier for additions and betterments to its property.”

The concluding sentence of the foregoing obviously refers to additions and betterments subsequent to the inventory or valuation date.

The Court of Appeals of New York has said:

“No court would receive as evidence of the value of ordinary commodities such as food stuffs and coal or even of real estate, proof of values which prevailed three years before unless it was supplemented by other evidence of the continuity of governing conditions, and common experience and observation do not sustain the belief that there has been any unusual stability during the last few years in prices entering into the cost of railroad operation which must be compensated by rates”—*People v. Public Service Commission*, 215 N. Y., 241, 248.

As the foregoing was said in a decision rendered on June 8, 1915, that is to say, a date half way between the valuation date of appellants, which was June 30, 1916, and June 30, 1914, the latest date represented in the prices used, the statement as to instability of prices is directly applicable in this case.

Moreover, the prices used, although commonly referred to by the Commission as the prices of June

30, 1914, are not the prices of that date. They do not purport to be the prices of any particular date and are not even represented to be those of any particular period of years—*R. 9*. The meagre information which has been vouchsafed to the railways in interest and to the public, concerning these prices, is indefinite and vague and their origin is surrounded by an impenetrable mist of obscurity. The Commission has said, however:

“Unit prices, for example, are being applied as of June 30, 1914. The attempt is not to determine the exact price of a particular article on that date, for that price may have been abnormally high or low, but rather to ascertain what may be termed a normal price. For this purpose it was thought that the range of prices over a period of five years previous, and in some cases ten years, should be consulted”—*Texas Midland Railroad, Appendix 3, 75 I. C. C., 1, 136-7*.

And in the *Winston-Salem* case, *supra*, it was said that:

“The prices employed by the Bureau of Valuation are not the exact prices which were necessarily in effect upon the precise date, June 30, 1914, but were fixed with relation to that date in such a way as to produce normal prices for periods ranging from five to ten years prior thereto”—*75 I. C. C., 187, 192*.

Still later, in the *Florida East Coast Railway* case, *supra*, a slightly more definite statement was made, as follows:

"In our reproduction studies we have applied unit prices based on a five-year and, for some items, ten-year span, ended June 30, 1914. The methods employed in making these studies are so fully stated in the *Texas Midland case, supra*, as to require no explanation here * * *"—84 I. C. C., 25, 35.

To the same effect, see:

Kansas City Southern Railway, 84 I. C. C., 113, 122;

Danville and Western Railway, 84 I. C. C., 227, 232;

Southern Railway in Mississippi, 84 I. C. C., 253, 255-6;

Knoxville, Sevierville and Eastern Railway, 84 I. C. C., 329, 330;

Durham and South Carolina Railroad, 84 I. C. C., 313, 315.

It is well-established and well known that the period 1905 to 1914, inclusive, that is to say the ten-years period thus indicated by the Commission, was a period of rising prices; so also, and in much greater degree was the period 1914 to 1916, inclusive. This is shown by data contained in *Bulletin No. 320* of the Bureau of Labor Statistics of the United States Department of Labor. The following "index numbers" of wholesale prices are taken from page 15 of that *Bulletin*:

<i>All</i>		<i>All</i>	
<i>Year</i>	<i>commodities</i>	<i>Year</i>	<i>commodities</i>
1905	86	1910	101
1906	89	1911	93
1907	94	1912	99
1908	90	1913	100
1909	97	1914	98

The foregoing data show that a *ten-years' average*, for a period ending with 1914, would be materially lower than the prices of 1914, and that a five-years' average, ending with 1914, would be about the same as 1914.

The "index numbers" of wholesale prices, shown on the same page of the same *Bulletin* for 1914 to 1916, compare as follows:

<i>Year</i>	<i>All commodities</i>
1914	98
1915	101
1916	127

These data roughly measure the injury suffered by appellants by reason of the Commission's refusal to use the current prices of the valuation date, June 30, 1916, and its insistence upon using prices attributed to uncertain periods ending before the rapid rise began; they also illustrate and fully support the admitted allegation of appellants' petition that—

"* * * current prices of said June 30, 1916, were materially higher than * * * the prices used by said Commission"—*R. 9.*

"The record clearly shows that the Commission in arriving at its final figure did not accord proper, if any, weight to the greatly enhanced costs of construction in 1920 over those prevailing about 1915 and before the war, as established by uncontradicted evidence; and the company's detailed estimated cost of reproduction new, less depreciation, at 1920 prices, appears to have been wholly disre-

garded. This was erroneous"—*Bluefield Water Works and Improvement Company v. Public Service Commission of West Virginia*, 262 U. S., 679, 689.

There can no longer be any doubt that in ascertaining cost of reproduction, in any valuation of the property of any railway or other public utility, the use of current prices and wages of the valuation date is essential. This question seems to have been set at rest for all time by the decisions of this Court in *Southwestern Bell Telephone Company v. Public Service Commission*, 262 U. S., 276; *Bluefield Water Works and Improvement Company v. Public Service Commission*, *supra*, and *Georgia Railway and Power Company v. Railroad Commission*, 262 U. S., 625. In the case first cited it was said:

"Obviously, the Commission undertook to value the property without according any weight to the greatly enhanced costs of material, labor, supplies, etc., over those prevailing in 1913, 1914 and 1916. As matter of common knowledge, these increases were large. Competent witnesses estimated them as forty-five to fifty per centum. * * * It is impossible to ascertain what will amount to a fair return upon properties devoted to public service without giving consideration to the cost of labor, supplies, etc., at the time the investigation is made. An honest and intelligent forecast of probable future values made upon a view of all the relevant circumstances, is essential. If the highly important element of present costs is wholly disregarded, such a forecast becomes impossible. Estimates for to-morrow cannot ignore prices of to-day"—262 U. S., 276, 287-8.

The so-called "tentative valuations," at issue in this proceeding, are palpably obnoxious to the foregoing rule in that they are made as of June 30, 1916; represent the properties existing on June 30, 1916 (obviously not the same as the properties of 1914), but were produced by the use of prices that were obsolete on June 30, 1916, that is average prices attributed to various and uncertain periods, none of which extends later than June 30, 1914.

THIRD.

Appellants would be substantially injured if the order of March 28, 1923, should be permitted to operate as a "tentative valuation" in the further process prescribed by the Valuation Act.

Considering the averments of appellants' petition, and the foregoing discussion, it must be apparent that *if the order of March 28, 1923, now in issue, is a valid order* and sufficiently meets the requirements of the Valuation Act, so that it can stand and serve as a "tentative valuation," *the power of the Commission to call anything which it chooses a "tentative valuation" is complete and boundless.* In other words, the alternative to holding that the order of March 28, 1923, is illegal and ineffective to establish a "tentative valuation" is to hold that, without inquiry or consideration, the Commission has power to declare that a certain figure, or assemblage of data, make up a "tentative valuation," which by the terms of the Act would become a "final valuation" if not

protested and, if protested, must be overcome by evidence or stand as established. Such a conclusion would leave the carefully phrased definitions of the Act as ineffective as though they did not exist would read out of the Act much that Congress made a part of it, and would largely destroy the value of the right of protest, secured to the public as well as to the carrier. It would render the effort of Congress to define and prescribe the process of valuation nugatory and vain.

**A. APPELLANTS ARE ENTITLED TO A
LAWFUL "TENTATIVE VALUATION" AS
THE STATUTORY FOUNDATION FOR
FURTHER PROCEEDINGS IN THE STAT-
UTORY PROCESS OF VALUATION BY
THE COMMISSION.**

More fully stated, the foregoing proposition amounts to this, that (a) the term "tentative valuation" is defined by Section 19a; (b) the Commission cannot make anything a "tentative valuation" that departs substantially from the statutory definition; (c) if the law is obeyed in matters of form and substance, the preparation of the "tentative valuation" is otherwise entirely controlled by the Commission; (d) a lawful "tentative valuation" marks the completion of an *ex parte* proceeding and opens the door for an *inter-party* proceeding; (e) this inter-party proceeding is, or may be, begun by a protest and in it the "tentative valuation" imposes upon the protestant the burden of proof to show that it ought to be altered; (f) Congress intended that all protestants (the public as well as the carrier may protest) should have all the matters set

forth in the statutory definition of a "tentative valuation" for their protection in this *inter-party* proceeding, and (g) appellants, having been denied a lawful "tentative valuation," will be greatly at disadvantage if the *inter-party* proceeding is allowed to go forward upon the order of March 28, 1923, or before a lawful "tentative valuation" has been made, and they have had the full statutory opportunity to base a protest thereon.

Paragraph XIX (*R. 11-2*) of appellants' petition shows that on account of the insufficiency of the order of March 28, 1923, they were "not sufficiently advised * * * to protect their rights by an adequate and proper and sufficiently full and detailed protest."

If it complies with the statutory definition the formulation of a "tentative valuation" is wholly within the control of the Commission. It is entitled to the assistance of the carriers, which they may not refuse (*Section 19a, paragraph e, R. 4*) but the Commission need not accept; in practice carrier co-operation has been welcomed up to a certain point and rejected beyond that point, sought in certain matters and rigidly excluded in others. But whatever official policy may dictate, the process is always within the breast of the Commission; within the law, its unrestricted will controls at every moment and at every point. The law does not establish, at any point in this stage, a right to be heard, to confront or to cross-examine any witness, to object to the competency of evidence or even to know what evidence is to be considered; there is no record. Every such opportunity and

right is postponed to the second stage of the process of valuation.

Ultimately there may emerge from this *ex parte* process a "tentative valuation." If it complies substantially with the Congressional will, as expressed in the statutory definition, it produces the statutory results and no inquiry can be made as to what preceded it or how it was formulated or its results obtained. That is to say, no inquiry can be made which attempts to go behind the showing of a lawful "tentative valuation." But, if it is a lawful "tentative valuation" it will fully show the answers to many inquiries upon its face. These answers will be found in the various analyses and reasons specified and called for by the statute, and in the absence of these analyses and reasons it would plainly seem that nothing could meet the statutory definition or be a "tentative valuation," for the purposes of the law.

When a lawful "tentative valuation" emerges it must be served upon many public authorities and upon the corporations in interest—*R. 4*. Each public authority and every corporation in interest must be allowed thirty days in which to protest against such "tentative valuation" and such protest, from any source, requires an hearing and full opportunity to show that, in the respects pointed out by the protest, it ought to be changed before being made a "final valuation." If no protest is filed, either by any public authority or by any corporation in interest, within the time allowed, the "tentative valuation" ripens into a "final valuation"—*Section 19a, paragraph (h) R. 4*.

If any protest is filed, from any quarter, a hearing *on the protest* must be held, but only matters *relevant to the protest* may be heard. Matters not protested are settled by the "tentative valuation" itself and require no proof; matters as to which protest is made are apparently determined by the "tentative valuation" unless it is overcome by evidence.

"If notice of protest is filed the Commission shall * * * hear and consider any matter relative and material thereto which may be presented in support of any such protest * * *"—*Section 19a, paragraph (i), R. 4-5.*

The result of such a hearing, provided for in the statute, is the determination by the Commission of a "final valuation." The Commission may conclude to make the "tentative valuation" the "final valuation," or it may make a "final valuation" different from the "tentative valuation," but *it does not, in any case, make a new "tentative valuation."* No protest, from any source, has any effect upon any "tentative valuation," as such.

"If after hearing any protest * * * the Commission shall be of opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof"—*Section 19a, paragraph (i), R. 4-5.*

The filing of protest by appellants could, therefore, avail them nothing towards obtaining the lawful "tentative valuation" to which they are entitled,

which Congress intended they should have and without which their substantial property rights cannot adequately be protected. They have no means of enforcing their right to a lawful "tentative valuation" save this proceeding.

The purpose of Congress in providing for a "tentative valuation," as the foundation for a subsequent *inter-party* proceeding intended to complete the process of valuation by the Commission, is very evident. It must have been considered that to require the whole work of valuation to be performed in accordance with the general rule that administrative bodies must act upon a record and the parties in interest have opportunity to cross-examine witnesses would be undesirably cumbersome. But Congress was confronted with the rule, and if it could accomplish the end in view in any manner, the method adopted must, to satisfy the minimum requirements of justice and those of the Constitution as well, secure to the parties affected a sufficient substitute. If the "tentative valuation" could be made to take the place of a record establishing equivalent results by competent testimony, and to justify shifting the burden of proof to the carrier, it could be only by defining it in such a way that its content would always safeguard the parties in interest, the public as well as the carrier, against any consequent and material disadvantage. And the definition would be of no avail unless it became enforceable.

Appellants consider that Congress intended to make the "tentative valuation" *prima facie* evidence in the subsequent proceedings leading to a "final valuation." It is recognized that the term

is not so applied in the statute and the District Court concluded otherwise, holding that it is—

“* * * without any probative effect *per se*”—*R. 257.*

Such, however, is clearly not the view of the Commission for in the recent valuation case of the *Durham and South Carolina Railroad, supra*, decided on July 14, 1924, it was held, by the Commission, that the “tentative valuation” must be overborne by the clear weight of evidence or it must prevail. The following is from the decision in that case:

“Under the provisions of the Act it is contemplated that to warrant correction of our tentative valuation carriers shall offer evidence of such character as will indicate clearly that an error has been made”—*84 I. C. C., 313, 314.*

And it will be shown elsewhere herein (*infra, 118-152, 190-205*), that, in practice, in valuation proceedings, and in many other proceedings before the Commission, “tentative valuations” are accepted as proof of the matters they contain, even in the face of considerable testimony tending to establish the contrary. It is indeed difficult to agree with the District Court, which seems to have considered as a mere “pleading,” an elaborate and formal order of the Commission, every averment of which must, in accordance with the express terms of the statute, stand as established unless protested, and if protested must stand unless affirmative proof of error is introduced. And this is especially true, when it is considered, also, that the body that must be

convinced of error is the same body which will be required formally to admit that it committed error.

By the Valuation Act, the initiative in valuation was placed with the Commission, an initiative that ordinarily carries with it the burden of affirmative proof. The right to require this proof according to the ordinary forms and rules of evidence was taken from the carriers, and Congress sought to set up an equivalent in a meticulously defined "tentative valuation." This right, which was to be replaced by an equivalent in the statutory metes and bounds of the "tentative valuation," is substantial. The right to have the other side prove its case is always a substantial right although the legislature may, when it does not act unreasonably or arbitrarily, modify the rules of evidence, shift the burden of proof, make one fact *prima facie* evidence of another and establish presumptions.

- Adams v. New York*, 192 U. S., 585, 588;
Mobile, Jackson and Kansas City Railroad v. Turnipseed, 219 U. S., 35, 42;
Bailey v. Alabama, 219 U. S., 219;
McFarland v. American Sugar Refining Company, 241 U. S., 79;
Hawes v. Georgia, 258 U. S., 1, 4-5;
St. Louis Southwestern Railway v. Interstate Commerce Commission, 264 U. S., 64, 77;
Boswell v. Pannell, 107 Texas, 433, 438;
Parrish v. Sun Publishing Association,
 6 N. Y. App. Div., 585, 587;
Hurd v. Wing, 56 N. Y., App. Div., 595, 598;

People v. Public Service Commission, 159 N. Y. App. Div., 546, 551, 555; affirmed 215 N. Y., 241; see page 253;
Heineman v. Heard, 62 N. Y., 448, 456;
Conselyea v. Swift, 103 N. Y., 604, 606;
Lake Ontario National Bank v. Judson, 122 N. Y., 278, 282;
Whitlock v. Fidelity and Casualty Company, 149 N. Y., 45.

"The rule as to the burden of proof is important and indispensable in the administration of justice, and constitutes a substantial right of the party upon whose adversary the burden rests. It should, therefore, be jealously guarded and rigidly enforced by the courts"—*Article "Evidence"*—22 C. J., 69-70.

Whatever Congress might have done, without impairing the Constitutional rights of appellants, in making any finding of the Commission in regard to value *prima facie* evidence in subsequent proceedings either before the Commission or elsewhere leading to the determination of value, what Congress actually did do was very carefully to describe, define and limit the character of the Commission's inquiry and the substantial character and content of its "tentative valuations." In seeking to hold the Commission to the statutory definition, appellants' sufficient basis of right is found in the statute itself—*St. Louis Southwestern Railway v. Interstate Commerce Commission*, 264 U. S., 64, 67.

And the right to a full record in proceedings before the Interstate Commerce Commission is established by a multitude of decisions. The following

is from the decision in *Interstate Commerce Commission v. Louisville and Nashville Railroad*, 227 U. S., 88:

"In such case it insisted that the order based on such opinion is conclusive, and (though *Interstate Commerce Commission v. Union P. R. Co.*, 222 U. S., 547, 56 L. Ed., 311, 32 Sup. Ct. Rep, 108, was to the contrary) could not be set aside, even if the finding was wholly without substantial evidence to support it.

"1. But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. And if the Government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. It would mean that, where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.

"In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, *quasi-judicial* in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to

the 'indisputable character of the evidence' (*Tang Tun v. Edsell*, 223 U. S., 681, 56 L. ed., 610, 32 Sup. Ct. Rep., 359; *Chin Yow v. U. S.*, 208 U. S., 13, 52 L. ed., 370, 28 Sup. Ct. Rep., 201; *Low Wah Suey v. Backus*, 225 U. S., 468, 56 L. ed., 1167, 32 Sup. Ct. Rep., 734; *Zakon-aite v. Wolf*, 226 U. S., 272, Ante, 218, 33 Sup. Ct. Rep., 31), or if the facts found do not, as a matter of law, support the order made *United States v. Baltimore & O. S. W. R. Co.*, 226 U. S., 14, ante, 104, 33 Sup. Ct. Rep., 5, Cf. *Atlantic Coast Line R. Co. v. North Carolina Corp. Commission*, 206 U. S., 20, 51 L. ed., 942, 27 Sup. Ct. Rep., 585; *Wisconsin M. & P. R. Co. v. Jacobson*, 179 U. S., 301, 45 L. ed., 201, 21 Sup. Ct. Rep., 115; *Washington ex rel., Oregon R. & Nav. Co. v. Fairchild* 224 U. S., 510, 56 L. ed., 863, 32 Sup. Ct. Rep., 535; *Interstate Commerce Commission v. Illinois C. R. Co.*, 215 U. S., 470, 54 L. ed., 287, 30 Sup. Ct. Rep., 155; *Southern P. Co. v. Interstate Commerce Commission*, 219 U. S., 433, 55 L. ed., 283, 31 Sup. Ct. Rep., 288; *Muser v. Magone*, 155 U. S., 247, 39 L. ed., 137, 15 Sup. Ct. Rep., 77 * * *.

"3. Under the statute the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable there was no jurisdiction to make the order. *Interstate Commerce Com-*

mission v. Northern P. R. Co., 216 U. S., 544, 54 L. ed., 609, 30 Sup. Ct. Rep., 417. In a case like the present the courts will not review the Commission's conclusions of fact (*Interstate Commerce Commission v. Delaware L. & W. R. Co.*, 220 U. S., 251, 55 L. ed., 456, 31 Sup. Ct. Rep., 392), by passing upon the credibility of witnesses or conflicts in the testimony. But the legal effect of evidence is a question of law. A finding without evidence is beyond the power of the Commission. An order based thereon is contrary to law, and must, in the language of the statute, be 'set aside by a court of competent jurisdiction.' 36 Stat. at L., 551, chap. 309.

"4. The government further insists that the Commerce Act (26 Stat. at L., 743, chap. 128, U. S. Comp. Stat., 1901, page 3163), requires the Commission to obtain information necessary to enable it to perform the duties and carry out the objects for which it was created; and having been given legislative power to make rates it can act, as could Congress, on such information, and therefore its findings must be presumed to have been supported by such information, even though not formally proved at the hearing. But such a construction would nullify the right to a hearing,—for manifestly there is no hearing when the party does not know what evidence is offered or considered, and is not given an opportunity to test, explain, or refute. * * * But the more liberal the practice in admitting testimony the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such

cases, the Commissioners cannot act upon their own information, as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown, but presumptively sufficient information to support the finding. *United States v. Baltimore & O. S. W. R. Co.*, 226 U. S., 14 ante, 104, 33 Sup. Ct. Rep., 5"—227 U. S., 88, 91-4.

To the same effect, see:

- Louisville & Nashville v. Interstate Commerce Commission*, 195 Fed., 541, 564;
- United States v. Baltimore & Ohio Railroad*, 225 U. S., 306, 323-4;
- United States v. Baltimore & Ohio Southwestern Railroad*, 226 U. S., 14, 20;
- Florida East Coast Railway v. United States*, 234 U. S., 167, 185-6;
- Kwock Jan Fat v. White*, 253 U. S., 454, 463-4;
- United States v. Abilene Southern Railway*, 265 U. S., 274, 288;
- Saratoga Springs v. Saratoga Gas, Electric and Power Company*, 191 N. Y., 123, 148.

It is of course true that "every statute to some extent requires construction by the public officers whose duties may be defined therein," but this does not permit them to construe statutory limitations or legislative mandates out of existence or to evade the performance of duties plainly prescribed by law—*Roberts v. United States*, 176 U. S., 221, 231; *Work v. United States*, 262 U. S., 200, 208-9.

When the law defines the duties of an administrative agency "it is a wholesome and necessary principle that such an agency must pursue the procedure and rules enjoined and show a substantial compliance therewith to give validity to its action." It was so held in *Wichita Railroad & Light Company v. Public Utilities Commission of Kansas, et al.*, 260 U. S., 48, decided on November 13, 1922. In that case it appeared that the Public Utility law of Kansas provided that an order granting increased rates for gas supply might supersede lower rates fixed by contract, but required an express finding by the Commission, after hearing, that the existing rates were unjust. The order of the Commission was set aside because this requirement had not been complied with. The opinion by Mr. Chief Justice Taft, says:

"* * * The power is expressly made to depend on the condition that after full hearing and investigation the Commission shall find existing rates to be unjust, unreasonable, unjustly discriminatory or unduly preferential. We conclude that a valid order of the Commission under the act must contain a finding of fact after hearing and investigation, upon

which the order is founded, and that for lack of such a finding, the order in this case was void.

"This conclusion accords with the construction put upon similar statutes in other States. *Public Utilities Commission v. Springfield Gas & Electric Co.*, 291 Ill., 209; *Public Utilities Commission v. Baltimore & Ohio Southwestern R. R. Co.*, 281 Ill., 405. Moreover, it accords with general principles of constitutional government. The maxim that a legislature may not delegate legislative power has some qualifications, as in the creation of municipalities, and also in the creation of administrative boards to apply to the myriad details of rate schedules the regulatory police power of the State. The latter qualification is made necessary in order that the legislative power may be effectively exercised. In creating such an administrative agency the legislature, *to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performance of its function.* It is a wholesome and necessary principle that such an agency must pursue the procedure and rules enjoined and *show a substantial compliance therewith to give validity to its action.* When, therefore, such an administrative agency is required as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking, the order is ineffective.

"It is pressed on us that the lack of an express finding may be supplied by implication

and by reference to the averments of the petition invoking the action of the Commission. We can not agree to this. It is doubtful whether the facts averred in the petition were sufficient to justify a finding that the contract rates were unreasonably low; but we do not find it necessary to answer this question. We rest our decision on the principle that an express finding of unreasonableness by the Commission was indispensable under the statutes of the State"—260 U. S., 48, 58-9.

Successive decisions by the Commerce Court (190 Fed., 591 and 203 Fed., 56), in a single case affecting the *Atchison, Topeka and Santa Fe Railway*, illustrate and apply this principle. In the first decision it appeared that the Interstate Commerce Commission had ordered a reduction in rates on lemons without first finding the jurisdictional fact that the rate complained of was unreasonable. The Commerce Court set aside the order, without prejudice to further proceedings before the Commission. The second decision shows that, subsequent to the first, such further proceedings were had before the Commission which thereupon found the requisite jurisdictional fact and, upon this later record, the court sustained the Commission—203 Fed., 56, 57.

See also, *Interstate Commerce Commission v. Goodrich Transit Company*, 224 U. S., 194, 214-5.

B. IN THE DETERMINATION OF "FINAL VALUATIONS," IN PROCEEDINGS UPON PROTESTS TO "TENTATIVE VALUATIONS," THE INTERSTATE COMMERCE COMMISSION CONSISTENTLY TREATS THE LATTER AS HAVING EVIDENTIARY FORCE BEYOND THAT ORDINARILY ATTRIBUTED TO MERE *PRIMA FACIE* EVIDENCE.

The *Texas Midland case, supra*, was the first in which a report and opinion was rendered by the Commission in any proceeding upon a protest to a "tentative valuation." A joint protest had been filed by the Governor of Texas and the Railroad Commission of that State; the carrier had protested; the National Association of Railway and Utilities Commissioners, Minnesota Railroad and Warehouse Commission, Public Utilities Commission of Kansas, Railroad Commission of Texas, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginememen, Order of Railway Conductors, Brotherhood of Railroad Trainmen and Western Union Telegraph Company had been represented in the hearings; decision was rendered on July 31, 1918.

The first protested item in the "tentative valuation" to receive consideration in the report and opinion was the allowance, under "cost of reproduction new" for clearing 353.63 acres of land. The "tentative valuation" had fixed this item at \$8,841, applying a rate of \$25.00 per acre; the carrier claimed that this was too low and proposed \$35.00 per acre, in its protest, as the figure to be substituted. At the hearing, the carrier produced testimony in support of this contention. The issue thus developed was determined by treating

the "tentative valuation" as having probative force sufficient to overcome all this testimony. The whole discussion of this item, in the report and opinion, is as follows:

"The carrier contends that the unit prices allowed are too low. Below are given the prices which the carrier in its protest claims should be fixed:

"Clearing	per acre	\$35.00
.....

"The carrier introduced testimony purporting to show that the clearing necessary in a theoretical reproduction would cost \$40.00 an acre. * * * The manager of the carrier testified that he thought \$27.50 to \$30.00 per acre would cover the cost of clearing. * * *

"The \$25.00 for clearing was arrived at after the consideration of contracts for work of this character which had been performed in the vicinity and nothing has been submitted in this record to show that it is unreasonably low. In fact, the opinion of the manager of the carrier, who has been with the property since it was built, that \$27.50 to \$30.00 should be allowed, may be said to support the price used when it is borne in mind that his testimony was opinion testimony unsupported by prices actually paid for similar work, and that his interest in the property might naturally influence his opinion so as to secure an amount which would beyond question fully recompense the carrier. The unit price of \$25.00 per acre for clearing is established"—75 *I. C. C.*, 1, 38.

In the same "tentative valuation" fifteen cents per cubic yard was applied to 662,673 cubic yards of earth excavation, resulting in an item of \$99,401 in the total determined for "cost of reproduction new"—75, *I. C. C.*, 1, 37. This item was protested by the carrier which suggested eighteen cents (75, *I. C. C.*, 1, 38) which would have raised the item twenty per cent to \$119,281. Sustaining the lower figure, the Commission said, in part:

"The testimony of the carrier was submitted by three contractors and three railroad engineers. The testimony of all these witnesses was practically the same to the effect that from seventeen to nineteen cents per cubic yard would be a fair price for the earth excavation and embankment necessary in a theoretical reproduction of the road. The testimony was confined to expressions of opinion as to the proper price, and was practically unsupported, although one engineer submitted figures showing the cost of work in changing the alignment and grade of a railroad already constructed. * * *

"* * * There is nothing of record which would justify a change in the price of fifteen cents per cubic yard for excavation"—75, *I. C. C.*, 1, 39-40.

The reference to "embankment," in the foregoing, will be noted. The "tentative valuation" then before the Commission allowed thirteen and one-half cents per cubic yard for 1,855,449 (1,686,817 plus ten per cent or 168,682 for shrinkage) cubic yards, resulting in an item of \$250,492 in the total for cost of reproduction new—75 *I. C. C.*, 1, 37. The

carrier claimed eighteen cents (75 I. C. C., 1, 38), or \$333,990. The reference in the report and opinion to the testimony of three witnesses who favored "seventeen to nineteen cents" for embankment, as well as for excavation, has already been quoted—*supra*, 120. It does not appear that any other testimony was received. Yet the Commission accepted the "tentative valuation" figures, saying, in part:

"The contention is made that there is no warrant for a difference in price for excavation and embankment. When the field work in this case was completed, our engineer reached a price of fifteen cents for embankment. The quantity to which this price was applied was limited to the exact measurements of embankments. It is well known that in order to make an embankment of specified dimensions, it is necessary to place in that embankment a certain amount of additional earth for shrinkage. * * * However, after conference between officials of the Bureau*, it was decided that the best way to treat this matter was to compensate for shrinkage in the quantities. This procedure contemplates the addition of a certain amount to the quantities which are found in the embankment after measurement. Ten per cent was arrived at, as a proper percentage to allow for such shrinkage. After it was decided to adopt this method it was necessary, in order to avoid duplication, to reduce the price ap-

*Presumably the Bureau of Valuation, in the office of the Interstate Commerce Commission.

plied by ten per cent. This resulted in a price of thirteen and one-half cents per cubic yard for embankment * * * From the facts of record we are of the opinion that the price of thirteen and one-half cents per cubic yard employed for the exact quantities found in embankments, increased by ten per cent to take care of shrinkage, will do full justice"—75 *I. C. C.*, 1, 40.

The fourth item protested and discussed amounted to \$49,862, being the total of allowances for difficult excavation at rates of sixty-five, thirty-five and twenty-four cents per cubic yard, for solid rock, loose rock and hardpan respectively—75, *I. C. C.*, 1, 37. The carrier claimed ninety-seven and forty-three cents, for solid and loose rock, respectively, but does not appear to have suggested a figure for hardpan—75 *I. C. C.*, 1, 38. The Commission accepted the "tentative value" figures, merely saying:

"The same character of evidence was introduced by the carrier with respect to loose-rock excavation, solid-rock formation, and hardpan. There is nothing of record, however, which would warrant a change in the prices found"—75 *I. C. C.*, 1, 40.

Account No. 6, bridges, trestles and culverts, was fixed at \$387,792 in the "tentative valuation" and the protest claimed \$532,222. The carrier's evidence was held insufficient to overcome the "tentative valuation"—75 *I. C. C.*, 1, 41-2.

Account No. 8, ties, was increased over the "tentative valuation," the first discussed in the

report and opinion to receive such treatment. This, however, was apparently upon the recommendation of the Bureau of Valuation, not, it would seem, because of the evidence produced by the carrier. The Commission said:

"The Bureau is convinced that the price of fifty-six cents per tie which was applied is too low and recommends that it be increased to sixty-nine cents per tie. The cost of reproduction new of ties wholly owned and used will be increased. * * *"—75 *I. C. C.*, 1, 42.

The foregoing extracts, and the whole tenor of the report and opinion from which they have been taken, seem almost inevitably to lead to conviction that the "tentative valuation" is practically regarded, in the proceedings of the Commission in hearings upon protests, as substantially conclusive proof of the matters it contains, unless it becomes possible to convince representatives of the Bureau of Valuation that it should be modified. It is patent, that in any hearing upon a protest to a "tentative valuation" the Commission is reviewing its own work; an order of its own based upon prolonged inquiry, which has involved heavy expenditures out of its funds provided by Congressional appropriation and the labors of many important subordinates whom it has selected and employed. Measurably, the Commission is, in such proceedings, a body of judges sitting upon a cause that is their own. This is so evident as to explain some degree of inclination to sustain the order in issue in such a proceeding and, likewise, to point to one of the reasons that must be assumed to have im-

pelled the Congress strictly to define the "tentative valuation" which it provided should become the basis of such a proceeding.

In the *Kansas City Southern case*, 75 I. C. C., 223, the figures of the "tentative valuation" were accepted, as to the engineering expenses, under the conditions indicated below:

"The Bureau has computed engineering on the basis of four per cent of the total amount shown as the cost of reproduction new of the road accounts exclusive of account No. 1, engineering, and account No. 2, land for transportation purposes. The carrier claims that this percentage is too low and should be increased to 4.566 per cent, which is the relation of the amount actually expended for engineering in original construction to the amount expended for road items. * * * The four per cent which has been used in this case reflects the judgment of the member of the engineering board and after consideration we are of the opinion that his estimate should stand"—75 I. C. C., 223, 253.

In the *San Pedro, Los Angeles and Salt Lake valuation case*, 75 I. C. C., 463, on protest to a "tentative valuation," the carrier sought to have the amount reported as "cost of equipment" increased by "amounts expended for additions and betterments that were said to have been charged from time to time to operating expenses." The Commission's opinion shows that testimony in support of this claim was produced by the carrier

and it does not appear that any evidence in support of the "tentative valuation" was introduced. The "tentative valuation" figure was, however, sustained, the Commission saying:

"The testimony submitted to support this contention shows that numerous estimates of the cost of additions and betterments were resorted to and that in some instances actual costs were determined from the expense accounts. This evidence upon the whole is wanting in the clearness and definiteness required to establish the propriety of a revision of the character proposed in the carrier's accounts. We adhere to the statement of investment in equipment as made in the tentative valuation"—75 I. C. C., 463, 474.

The length of the construction period allowed in a "tentative valuation" for the purpose of determining "cost of reproduction new," is "of importance in determining interest during construction"—*Kansas City Southern case*, 75 I. C. C., 223, 257. In the *San Pedro, Los Angeles and Salt Lake case*, *supra*, the carrier's contention was that the period of construction adopted in the "tentative valuation" was too short and "impracticable." The Commission sustained the "tentative valuation," stating the carrier's position and its own as follows:

"The carrier protests that the program of reproduction which was adopted as a basis for estimating the cost of reproduction new was defective in that it did not provide for the

most economical method of constructing the property. An effort was made to show that in certain particulars the contemplated program was impracticable. The carrier contends that the program assumed did not select the best locations for material yards and did not include in the unit cost for a large number of the different kinds of material a sufficient amount for costs of transportation. We have carefully examined the testimony relating to the practicability of the program of reconstruction that our engineers have adhered to. *Whether or not it was the best possible program that could have been adopted we need not decide. For the purpose of estimating the cost of reproduction of the carrier's property in this case we approve it*—75 I. C. C., 463, 474-5, Italics ours.

In the cited case, also, changes favorable to the carrier were made, from the "tentative valuation," upon the recommendation of the Bureau of Valuation, in one instance the Land Section of that Bureau. The opinion of the majority refers to these changes as follows:

"At the hearing representatives of the land section agreed to certain increases in the unit prices of land, in zones 10, 11 and 13, of valuation section 18, which we approve"—75 I. C. C., 463, 497.

Mr. Commissioner Potter, in a separate opinion, "concurring in part," expressing his conclusion that the "final value is too low" (75 I. C. C., 463, 567), declared, in substance, that the majority of the Commission had done precisely what it is

now argued that it constantly does do, namely, attributed extraordinary probative force to the work of its Bureau of Valuation. He said (Mr. Commissioner Cox concurring with him) :

“It seems to me clear from the report that the conclusion at which we arrive was not a conclusion based on all the testimony, but was a conclusion arrived at after excluding from consideration important testimony which was entitled to have weight, and if given weight must have so affected the result as to substantially increase the values beyond those which our appraisers found. * * * *When at the hearing one of our own appraisers suggested a change, we promptly adopted it, seemingly for no reason except that he had made it.* We should not conclude that the men whom we selected were infallible. Perhaps our Bureau selected low-value men”—75 I. C. C., 463, 575.

The importance of the foregoing is made clear when it is noted that the final valuation of this carrier states the value of its owned carrier lands as \$4,156,227.36 and that of its owned non-carrier lands as \$3,369,647.94 (75 I. C. C., 463, 607), a total of \$7,525,875.30. The difference between the claims of the carrier as to the value of lands in Valuation Section 1, only one of the twenty valuation sections as to which land values were determined, was \$8,038,950, the carrier claiming \$10,647,081 and the “tentative valuation” allowing \$2,608,131. In two other valuation sections the carrier claimed \$4,307,860 and the “tentative valuation” allowed \$3,092,155,

a difference of \$1,215,705. What the differences were in other valuation sections does not appear in the report and opinion (75 *I. C. C.*, 463, 490, 496) but the total for these three sections is \$9,254,655. Mr. Commissioner Potter states, in the separate opinion above quoted (*supra*,—), that in only “one lone instance” was a figure higher than that of the Bureau of Valuation accepted for the “final valuation” and that in that instance the advance allowed was from \$8,297 to \$9,197.20. His observation merits quotation:

“The fact that in the one lone instance, in valuing the Vandybarker ranch, we accepted the carrier’s higher value of \$9,197.20, instead of our own of \$8,297, does not prove that in all cases due weight was given to the carrier’s testimony. It is likely that our men were wrong with respect to properties where larger amounts were involved”—75 *I. C. C.*, 463, 575.

The protest of the Atlanta Birmingham and Atlantic Railroad Company (75 *I. C. C.*, 645) in respect of the application of the rate fixed for interest during construction seems to have been overruled without any evidence supporting the “tentative valuation.” The report and opinion says:

“The Bureau of Valuation calculated interest on the road accounts, except land, for one-half the construction period of a particular section plus three months; on general expenditures, except interest during construction, for one-half the construction period plus three months; and on equipment, for a period of three months.

"With respect to each of these items the carrier insists that the period is too short, and considerable evidence to sustain its contention was introduced.

"Considering the evidence of record, we are of opinion and find that the methods adopted with respect to calculation of interest are reasonable and just and they are approved"—*75 I. C. C.*, 645, 659.

In the *Florida East Coast Railway valuation case*, *84 I. C. C.*, 25, the "tentative valuation" had fixed \$45,500,000 as the value of "the railroad property, separated from working capital then on hand" (*84 I. C. C.*, 25, 35), and had included \$1,431,947 in the "final single sum value" for working capital, making a total of \$46,931,947—*84 I. C. C.*, 25, 26. Florida East Coast Railway Company, Atlantic and East Coast Terminal Company and Atlantic Coast Line Railroad Company filed protests within the statutory period and hearing was held—*84 I. C. C.*, 25. The Commission made no change in the total of \$45,500,000, which was protested, but *reduced* the amount assigned for working capital to \$700,000, declaring the single-sum value in the final valuation as \$46,200,000—*84 I. C. C.*, 25, 32, 37. *Every protested item was determined against the carrier.*

The final paragraph, of the report and opinion of the majority of the Commission, in the *Ann Arbor Railroad valuation case* (*84 I. C. C.*, 159) *rejects every item in the carrier's protest and contains the following:*

"We have carefully reviewed all the matters presented by the carrier in support of its

protest and are unable to find therein any justification for modifying the valuations as reported in the tentative report"—84 I. C. C., 159, 170.

The foregoing is especially remarkable in that the eleven pages of the report by which it is preceded contain *no reference to any testimony of any character in support of the "tentative valuation" but do contain abundant references to testimony in support of the protest.* The following extracts from the report and opinion of the majority are typical:

"The amount stated in the tentative valuation for engineering was figured at 4.25 per cent. * * * The carrier claims five per cent for this item based principally upon the testimony of its former chief engineer. * * * No change will be made in the amounts stated for engineering in the tentative valuation"—84 I. C. C., 159, 160.

"The tentative valuation allows \$1,763,581 in cost of reproduction new for grading. * * * The carrier protests * * * and * * * claims the total allowance under this account should be * * * increased to \$2,405,611. * * *

"Two witnesses testified * * * for * * * the carrier. * * *

"There is nothing in the evidence introduced by the carrier which would indicate that the unit prices for grading used in the tentative valuation are insufficient and they are approved"—84 I. C. C., 159, 160-1.

"The carrier claims an allowance of \$593,384 for gravel ballast. * * * The tentative valuation allowed \$425,472. * * * The carrier's witness stated that this matter had been fully presented to our engineers in an informal consideration of the engineering report. *We see no reason for displacing the judgment of our engineers* * * * and the unit price for ballast as contained in the tentative valuation is approved"—84 I. C. C., 159, 162, Italics ours.

"The carrier's claim is based upon the testimony of its chief engineer. * * *

"Another witness for the carrier testified. * * *

"All of the information prepared by the subcommittee referred to was submitted to our Bureau of Valuation in detail and the formula referred to was reviewed by our engineers. * * * The evidence offered by the carrier is not convincing that the allowance in the tentative valuation for tracklaying and surfacing is insufficient"—84 I. C. C., 159, 163.

"The tentative valuation allowed \$112,194 for general expenditures. * * * The carrier claims \$393,009. * * * This claim is fortified by the opinion of two witnesses. * * *

"* * * Nothing that is offered by the carrier would lead us to believe that the method there outlined is not correct or that the amount produced by the application of the percentage determined upon in this case is less than a fair and reasonable allowance for general expenditures"—84 I. C. C., 159, 163.

"The tentative valuation includes an allowance of \$742,680 for interest during construction. This amount is based upon a construction period of two and one-half years. * * * The carrier claims \$1,288,687 based upon a construction period of four years and the inclusion of interest during that period for account 2, 'Land.' The carrier's claim was supported by the testimony of two witnesses.* * *

"* * * Nothing in this record indicates that the methods therein stated or the results reached thereby are inaccurate or other than fair and reasonable"—84 *I. C. C.*, 159, 163-4.

"The carrier claims that cost of reproduction new in the tentative valuation should be increased by an amount of \$2,723,911 to cover cost of development. As a basis of this claim the carrier offered in evidence. * * *

"In further support of its claim the carrier introduced an exhibit. * * *

"The carriers claim for development cost cannot be allowed"—84 *I. C. C.*, 159, 164-5.

"The carrier has protested the methods, rules and principles used in determining the amount of depreciation of the carrier's property. The testimony of two witnesses was offered in support of the protest. * * *

"We are not convinced by anything in this record that the results reached by the application of the methods and principles there approved* are not fair and proper"—84 *I. C. C.*, 159, 166.

*That is, approved in the *Texas Midland case*, *supra*, decided on July 31, 1918; the cited case was decided on July 5, 1924.

"The carrier claims that the amount shown in the tentative valuation for investment in road and equipment should be increased by \$2,858,651.71. * * * In support of this claim the carrier introduced one exhibit * * * It was testified¹ * * * The former chief engineer of the carrier appeared as a witness. * * *

"The claim of the carrier in this connection is not supported by the record and will not be allowed"—84 *I. C. C.*, 159, 167-8.

"* * * the tentative valuation included an allowance of \$233,754 on account of working capital. * * * In its protest the carrier claimed * * * \$627,421. * * *

"In this instance the figure reported in the tentative valuation represents a fair allowance considering the extent of the carrier's property and its average operating resources and expenses and we see no reason for changing the tentative report in respect of working capital"—84 *I. C. C.*, 159, 169.

The elisions from the foregoing series of extracts include unessential words and summaries of the carriers' testimony and contentions. Nothing has been omitted that could suggest that any testimony in support of the "tentative valuation" was considered or received. The omission of the summaries of testimony does not seem to be of any account for, *whatever the testimony and whatever the question in controversy, the result was invariably the same, the "tentative valuation" was always sustained.* The extracts cover every contested item

¹In favor of the carriers claim, as the context shows.

and every contested item was, as they show, resolved in favor of the "tentative valuation" and the Bureau of Valuation. The inescapable conclusion is that the Commission, the creator of every "tentative valuation," regards its creature as invariably immaculate and impregnable.

The Danville and Western Railway Company (84 I. C. C., 227) protested against its "tentative valuation" and produced testimony in support of its protest (84 I. C. C., 227, 8), with the result that every protested item but one was determined against the protestant and the allowance of working capital, which had not been protested, was cut down from \$94,847 to \$28,000, with a reduction in the single-sum value from \$1,978,347 to \$1,913,000. An increase of \$1,268 in "cost of reproduction less depreciation," this being the single item decided for the carrier, seems to be represented in the last figure by an addition of \$1,500 (\$1,978,347 minus \$66,847—the reduction in working capital—equals \$1,911,500 which is \$1,500 less than \$1,913,000), perhaps to reach a "round" figure.

See, also,

Durham and South Carolina Railroad, 84 I. C. C., 313, 315, 317.

In Southern Railway Company in Mississippi, 84 I. C. C., 253, a valuation case, the "tentative valuation" of the principal carrier was made final without any change (at \$4,470,534) and that of a subsidiary was reduced \$13,500, the reduction being attributed to "an error in the tentative statement of the final value * * *"—84 I. C. C., 253, 257.

The foregoing analysis, which includes every decision but one rendered upon a protest to a "tentative valuation," by the full Commission, rather than by Division 1 of the Commission, indicates that the orders establishing these "tentative valuations," as well as the antecedent proceedings which are known only to the Commission (*supra*, 104), have the strongest persuasive force, if not always conclusive force, in all proceedings upon protest. It is significant that, in the omitted case (that of Evansville & Indianapolis Railroad Company, 75 I. C. C., 443, the carrier protested, but did not appear at the hearing. On this "default," the Commission made the "tentative valuation" final, first striking out all data concerning "the present cost of condemnation and damages or of purchase of lands in excess of such original cost or present value"—75 I. C. C., 443, 444.

"Tentative valuations" have also been made "final valuations," *after protest*, but upon "default" or failure to support the protest by evidence, but without testimony in support of the "tentative valuation," in *Bowdon Railway*, 84 I. C. C., 277; *Wood River Branch Railroad*, 84 I. C. C., 289; *Rhode Island Company*, 84 I. C. C., 299, and *Hoosac Tunnel and Wilmington Railroad*, 84 I. C. C., 343.

Appellants consider that this analysis of decisions in valuation cases shows serious and irreparable injury accruing to any carrier which is forced to proceed through hearings on its protest, when such proceedings and protest are bottomed upon an incomplete and arbitrary "tentative valuation"

that fails substantially to conform with the statutory definition. The difficulties indicated are not merely legalistic and theoretical, they are practical and exigent, they are encountered at every point and are insurmountable if an order not substantially conforming with the statutory definition can stand as though it were a lawful "tentative valuation."

C. IN FIXING RAILWAY RATES AND OTHER MATTERS WITHIN ITS AUTHORITY, THE INTERSTATE COMMERCE COMMISSION CONSISTENTLY TREATS ITS "TENTATIVE VALUATIONS," AND EVEN THE INQUIRIES OF ITS BUREAU OF VALUATION THAT ARE PRELIMINARY TO "TENTATIVE VALUATIONS," AS HAVING EVIDENTIARY WEIGHT.

"We are constantly referring to our tentative reports and using their findings in determining the amount of allowable stock issues and otherwise in our work"—*Mr. Commissioner Potter and Mr. Commissioner Cox, dissenting, Florida East Coast Railway, 84 I. C. C., 25, 45.*

By paragraph (2) of Section 15a, added to the Interstate Commerce Act by the Transportation Act of February 28, 1920, it is provided that—

"The Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will * * * earn

* * * as nearly as may be, * * * a fair return upon the aggregate *value* of the railway property of such carriers held for and used in the service of transportation * * *”—Italics ours.

Paragraph (4), of the same section is as follows:

“For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. *The Commission may utilize the results of its investigation under Section 19a of this Act, in so far as deemed by it available*, and shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes, and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes. Whenever pursuant to Section 19a of this Act the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value”—Italics ours.

Paragraph (6), the so-called “re-capture clause,” also rests upon value. This paragraph reads, in part, as follows:

“If * * * any carrier receives for any year a net railway operating income in excess of six

per centum of the *value* of the railway property held for and used by it in the service of transportation. * * * For the purposes of this paragraph the *value* of the railway property * * * of a group of carriers * * * under common control and management and * * * operated as a single system, shall be computed for the system as a whole. * * * The *value* of such railway property shall be determined by the Commission in the manner provided in paragraph (4)"—Italics ours.

Paragraph (7), controlling the use of the carrier's reserve fund to be established under the "recapture" clause is, in part, as follows:

"For the purpose of paying dividends or interest * * * a carrier may draw from the reserve fund established and maintained by it * * * to the extent that its net railway operating income for any year is less than a sum equal to six per centum of the *value* of the railway property held for and used by it in the service of transportation, determined as provided in paragraph (6) * * *"—Italics ours.

Paragraph (8) also makes use of *value*, similarly determined. The significant portion reads:

"Such reserve fund need not be accumulated and maintained by any carrier beyond a sum equal to five per centum of the *value* of its railway property determined as herein provided * * *"—Italics ours.

Section 5, of the Interstate Commerce Act, as amended in 1920, empowers the Commission to authorize consolidations of railways, and paragraph (6), sub-paragraph (b) is as follows:

“The bonds at par of the corporation which is to become the owner of the consolidated properties, together with the outstanding capital stock at par of such corporation, shall not exceed the *value* of the consolidated properties as determined by the Commission. The value of the properties sought to be consolidated shall be ascertained by the Commission under Section 19a of this Act and it shall be the duty of the Commission to proceed immediately to the ascertainment of such value for the properties involved in a proposed consolidation upon the filing of the application for such consolidation”—*Italics ours.*

In addition to the matters covered by the foregoing extracts from the law, it appears that the Commission regards the value of the railway property of a carrier as a condition affecting the propriety of according authority to issue securities under Section 20a of the Act. Thus the application of Pittsburgh and West Virginia Railway for authority to issue certain securities and to guarantee obligations of the West Side Belt Railroad Company was denied, apparently because the tentative valuation of the property that it was desired to acquire was accepted as establishing that its value was less than its book value and less than the par value of the securities proposed to be issued and the obligations to be assumed in connection with its acquisition—76 *I. C. C.*, 663, 668, 673.

A "tentative valuation" appears to have controlled the determination upon the application of the Knoxville and Carolina Railroad Company to issue stocks and bonds—72 *I. C. C.*, 221. That corporation, which had no securities outstanding and had been organized as a successor in reorganization to the Knoxville, Sevierville and Eastern Railway Company, applied for authority to issue \$300,000 in par value of stock and \$132,000 in par value of first mortgage six per cent bonds. The Commission stated that no objection to the granting of the application had been received. It also stated that the balance sheet of the applicant's predecessor in title recorded an investment in road and equipment, less depreciation, of \$1,210,103.35. Nevertheless, upon the sole basis of the "tentative valuation," and the record of expenditures for additions and betterments subsequent to the valuation date, the Commission restricted the permitted issue of capital stock to \$260,200 in par value. The report and opinion contains the following:

"Our tentative valuation report shows the cost of reproduction of the property, less depreciation and including land, at June 30, 1916, as \$380,440. There has been a net charge to the capital account through additions and betterments to road and equipment of \$2,774 up to December 31, 1920, and the applicant represents that it has spent approximately \$9,000 for similar purposes, making a total capitalizable value of \$392,214. On this basis we shall authorize the issue of \$260,200 of capital stock and \$132,000 of bonds"—72 *I. C. C.*, 221, 222.

The "tentative valuation" of this company was again referred to as evidence in a later application for authority to issue bonds, in which it was noted that no final valuation had been determined—*Knoxville & Carolina Railroad Bonds*, 79 I. C. C., 542, 544.

See also:

Craig Mountain Railway, 79 I. C. C., 60, 62;

Georgia, Ashburn, Sylvester & Camilla, 76 I. C. C., 166, 167;

Missouri-Kansas-Texas Reorganization, 76 I. C. C., 84, 103.

Increased Rates, 1920, 58 I. C. C., 220, often referred to as "*Ex Parte 74*," seems to have been determined, in part, upon the basis of "tentative valuations," and even the preliminary inquiries of the Bureau of Valuation of the Commission. The Commission said:

"While the valuation of the railroads under Section 19a of the Interstate Commerce Act is still incomplete, the work has progressed so far that the results are of value and informative in reaching the determination we are now required to make. So far as the work has produced results, either as to particular roads, or as showing general tendencies and principles, we have given consideration thereto"—58 I. C. C., 220, 228.

The cited case was decided on July 29, 1920. At that time the Commission had determined, in part

only, the "final valuations" of three carriers or systems of carriers, *Texas Midland*, 75 I. C. C., 1; *Winston-Salem Southbound*, 75 I. C. C., 187; *Kansas City Southern*, 75 I. C. C., 223, none of them of extensive mileage. Moreover, even these three "final valuations" were incomplete, and in not one of them had the Commission fixed or stated a single-sum as the value of the entire carrier property of the corporation or system—75 I. C. C., 7, 188-9, 229. The first case to fix a single-sum value was decided on July 11, 1922—*Evansville and Indianapolis Railroad*, 75 I. C. C., 443. It is clearly apparent, therefore, that to whatever extent the Commission relied upon the results of its inquiries under Section 19a in determining *Increased Rates, 1920, supra*, it must have used "tentative valuations" or data in process of being arranged, digested and summarized in making them. The progress of the investigations under Section 19a to November 1, 1920, three months after the decision last referred to, is shown by the Annual Report of the Commission for the year 1921, from which the following extract has been taken:

"Prior to November 1, 1920, fifty-five tentative valuation reports, representing the properties of seventy carriers had been issued by us"—*Thirty-fifth Annual Report*, p. 55.

Freight rates on all railways in the country were substantially reduced, effective on July 1, 1922, by an order entered in *Reduced Rates, 1922*, 68 I. C. C., 676, and in this proceeding, also, there was extensive reliance upon "tentative valuations." On this point, the Commission said:

"More than twenty months have passed since our former determination,* and in that period the valuation of railroads under Section 19a has gone forward. The work is still incomplete, but has progressed to such an extent that we may accept the results with fuller assurance, both as to particular roads and as showing general trends and principles. * * *

"* * * We find no present reason to disturb the value taken by us in that proceeding as approximating the sums there stated, except to the extent that subsequent additions to or withdrawals from the property in service, including materials and supplies and working capital, and further depreciation, make adjustment necessary"—68 *I. C. C.*, 676, 684-5.

The case last quoted was decided on May 16, 1922. On that date, there were still only three so-called "final valuations" in existence and these were incomplete, no one of them containing a single-sum value—*supra*, 142. Six and one-half months later, on December 1, 1922, the Commission reported (*Thirty-sixth Annual Report*, pp. 70-71), on the progress of its valuation work to the end of October, 1920, and stated that 287 "tentative valuations" had been served, covering four hundred corporations and 39,956 miles of railway or 16.11 per cent, less than one-sixth, of the railway mileage of the country. The same report shows (*p.* 71), that the Bureau of Valuation had made, to October 31, 1922, 555 accounting reports covering 151,572 miles of railway or 61.11 per cent of the country's mileage; 636 engineering reports cover-

*The reference is to *Increased Rates*, 1920, *supra*.

ing 179,475 miles or 72.37 per cent, and 671 land reports covering 144,411 miles or 58.23 per cent.

Use, in rate cases, of "tentative valuations" and other data collected by the Bureau of Valuation, was referred to in the same annual report, as follows:

"In *Increased Rates, 1920, 58 I. C. C., 220*, decided July 29, 1920, we said with respect to valuation under Section 19a:

" 'So far as the work has produced results, either as to particular roads, or as showing general tendencies and principles, we have given consideration thereto.'

"At that time we had available underlying valuation reports covering 15.5 per cent of the total mileage. In our consideration of *Reduced Rates, 1922, 68 I. C. C., 676*, we had available underlying valuation reports covering 47.7 per cent of the total mileage. We there said, page 684:

" 'More than twenty months have passed since our former determination, and in that period the valuation of the railroads under section 19a has gone forward. The work is still incomplete, but has progressed to such an extent that we may accept the results with fuller assurance, both as to particular roads and as showing general trends and principles.'

"Analysis of the preceding summaries and of the schedule for the remaining months of 1922

indicates that for a similar survey of rates, fares, and charges the underlying reports available early in 1923 would cover approximately 75 per cent. of the total mileage"—*Thirty-sixth Annual Report of the Interstate Commerce Commission, 1922; p. 72.*

Data from "tentative valuations" were offered in evidence by complainants and received and considered by the Commission in *In the Matter of Rates and Charges on Grain and Grain Products, 91 I. C. C., 105*, decided on July 10, 1924. The following is quoted from the report and opinion:

"Complainants in the *Kansas case* urge that 'reductions in rates on grain applicable in the western group are in harmony with the purpose of section 15a of the transportation act when * * * the true net earnings of that period are applied to the fair value of property of carriers in the western group.' *A basic consideration, therefore, is the fair value of the property of carriers in the western group. * * **

"In support of these contentions the complainants presented two exhibits. One was compiled from data published by the presidents' conference committee on valuation of the Association of Railway Executives, as to certain *basic figures from tentative valuations of railroads adopted and served as such by us.* This exhibit purported to show, as to 151 carriers in the western district (which includes the western group and mountain-Pacific group), the *relationship between the aggregate of the tentative final valuations found by us in that district and the recorded amounts in the*

accounts of investment in road and equipment of the same carriers. The exhibit also set forth the par value of the stock on valuation date, and the capitalized debt. The tentative valuations were as of various dates, from 1914 to 1918. The exhibit undertook to bring the investment in road and equipment from the valuation dates to December 31, 1919, by taking into account the increment in the road and equipment or property investment shown in the annual reports to the Commission or in various recognized statistical publications.

*** * * The witness stated that the aggregate of the tentative final valuations of these lines amounted to 78.19 per cent of the aggregate of the investment in road and equipment of the same carriers on the respective valuation dates, as stated in the books of the carriers.*

"In another exhibit the percentage so deduced, 78.19 per cent, was applied to the book value, \$8,818,454,872, of the roads in the western district, and the result, \$6,895,149,864, was stated as 'value for rate-making purposes as of December 31, 1919.' On this exhibit is based complainants' claim that reductions in rates on grain applicable in the western group are in harmony with the purpose of section 15a of the Act, when the true net earnings are applied to the fair value of the property of carriers in the western group.

"The exhibit as originally submitted and received did not take account of additions and betterments subsequent to December 31, 1919, which the carriers claim amounted to approximately \$700,000,000. Adding that amount to the deduced value, \$6,895,149,864, complain-

ants in their brief state a value for rate-making purposes as of December 31, 1923, of \$7,595,149,864. A return of 5.75 per cent on this amount is \$436,741,116. It was seemingly accepted that the net return for the first nine months of the calendar year should be 68.9 per cent of the year's income. Applied to the value last stated this would give \$300,900,848 as the theoretical 5.75 per cent return, on the basis of the aggregate value put forward by complainants. The net return for the first nine months was in fact \$245,545,800.

"To the last-named amount the complainants add 'two-thirds of alleged excess maintenance charges against nine months' operation, year 1923,' \$53,922,526, and show an adjusted net operating income for the first nine months of 1923 of \$299,468,326, which is a rate of return of 5.72 per cent on the value as of December 31, 1923, computed by them as above stated.

"In determining whether this evidence is sufficient to cast serious doubt upon the validity of the values found as approximations in *Increased Rates, 1920, supra*, and followed in *Reduced Rates, 1922*, 68 I. C. C. 676, two questions are presented: (1) Whether the method pursued by complainants is sound; and (2) whether the data to which the method is applied were sufficient. In testing this evidence, broadly stated by complainants as merely casting a doubt and as not probative, *obviously we are not confined to the record, but may inform ourselves in any way open under section 15a* to enable us to determine whether the doubt cast upon our previous decisions is substantial or not"—91 I. C. C., 105, 110-2, Italics ours.

The Commission proceeded to review its use of "tentative valuations" in *Increased Rates, 1920, supra*, and in *Reduced Rates, 1922, supra*, and to an elaborate analysis of the method of applying these "tentative valuations" proposed by the complainants in the case then under consideration. This analysis occupies several pages (113-6) in the report and opinion. In concluding its analysis of this portion of complainants' testimony, the Commission said:

"* * * The complainants exercised no selection as to roads, inasmuch as they took *all of the announced tentative valuations* in the order as they were approved for service and no criticism is therefore implied that unrepresentative roads were taken. But results obtained from a study of these 151 properties are dominated by the characteristics of the Great Northern, the Oregon-Washington Railroad & Navigation Company, and the Rock Island systems. The *tentative final value* found for these three dominating roads is ninety-eight per cent of the aggregate book investment on the valuation date. The *tentative final values* of the other roads, 148 in number, appearing in the exhibit, are but 55.3 per cent of the book investment on valuation date.

"The exhibit tends to show that the final valuation* of the stronger and larger roads more nearly approximates the book value than is the case with the weaker and smaller roads. In other words, there is much more inflation

*This obviously means "tentative final value," as the term is used in the preceding paragraph.

in the book values of the smaller roads than in the case of the larger roads used in compiling the exhibit. In the progress of our valuation work a proportionately greater number of small roads have advanced to the tentative valuation stage than the larger roads. Thus, as has been previously pointed out, the inflation of the investment account of the smaller carriers has reflected itself conspicuously in a lower ratio found in the exhibit than a normal course would indicate as proper.

"The absence of important carriers such as the Santa Fe, Chicago & North Western, Burlington, Northern Pacific, Milwaukee, Missouri Pacific, Great Western, Minneapolis & St. Louis, Missouri-Kansas-Texas, Union Pacific, Frisco, Soo Line, Oregon Short Line, Denver & Rio Grande Western, Southern Pacific and Western Pacific minimizes the criticism inferable from complainants' exhibit"—91 I. C. C., 105, 116, *Italics ours*.

Following the foregoing, reference was again made to *Reduced Rates*, 1922, and the data relied upon in that case as establishing "value" under Section 15a were reviewed in the paragraphs which are reprinted below:

"The following general sources of information derived from the investigation under section 19a were deemed to be available, as that term was used in the statute.

"1. *Tentative valuations showing a final value, which have been approved for service and have been served by the Commission upon*

the carriers, the States, and the Attorney General of the United States. *As to many of these there are protests by the carriers, and in some cases by the States, which are yet to be heard.* In many cases no protest had been filed, and the value tentatively fixed is final or will become so when an appropriate order has been entered by the Commission. *In these cases, the amount so stated must, under the terms of section 15a, be used.* * * *

2. *Preliminary reports by our Bureau of Valuation sufficiently complete to be furnished by it to the carriers for their criticism, as to which the three underlying reports have been completed. In certain of these cases, tentative valuation reports had been drafted, but had not yet been served.* Of 137,766.45 miles of road in the western and mountain-Pacific groups, data were available as to approximately 43 per cent.

"The results obtained by a study of the available information procured under section 19a of the Act were brought to a common date by appropriate consideration of increments or reductions in investment due to extensions or new lines, additions and betterments, retirements, changes in depreciation reserves, and in working capital, including materials and supplies"—91 I. C. C., 105, 117, *Italics ours.*

Upon the evidence thus analyzed, the Commission reached the conclusion that the value determined in the earlier cases should stand.

"We have reviewed the evidence submitted on the question of value, and nothing of record

leads us to conclude that the basis of approximate value in the western district, adopted by us in 1920 and reviewed in 1922, should be changed"—91 *I. C. C.*, 105, 118.

The entire discussion of values in the case last under discussion is so significant that it has been reprinted in full as Appendix II to this brief (*infra*, 190-205). It would alone suffice to show that the "tentative valuations," including the order of March 28, 1923, contested in this proceeding, are continually relied upon as evidence in important contested cases. It would be difficult to reach any conclusion other than that an erroneous and unlawful "tentative valuation" thus regarded and used, is strongly injurious to the carrier or carriers directly concerned.

See also :

- Matter of New York, Philadelphia & Norfolk Railroad*, 70 *I. C. C.*, 299, 300;
- Matter of Bullfrog Goldfield Railroad*, 70 *I. C. C.*, 354, 355;
- Matter of Norfolk Southern Railroad*, 70 *I. C. C.*, 774;
- Reduced Rates, 1922*, 77 *I. C. C.*, 675;
- New England Divisions*, 62 *I. C. C.*, 513;
- Graham and Gila Counties Traffic Association v. Arizona Eastern*, 81 *I. C. C.*, 134, 137;
- Reduced Rates, 1922*, 81 *I. C. C.*, 170;
- Arizona Corporation Commission et al. v. Arizona Eastern Railroad Company*, 85 *I. C. C.*, 76, 90.

Moreover, it is undeniably true, as stated by Mr. Commissioner Potter, in a dissenting opinion in the *Kansas City Southern Railway case*, *supra*, that:

"Carriers may be injured by a proclamation that a certain figure is 'value' if that figure is not value"—84 *I. C. C.*, 113, 127.

D. EVERY CARRIER IS ENTITLED TO A LAWFUL "TENTATIVE VALUATION," AS THE BASIS OF A PROTEST, IF IT DESIRES TO MAKE ONE, AND OF THE PROCEEDING UPON SUCH PROTEST, BUT PROTESTS BASED UPON ERRORS OF LAW IN A "TENTATIVE VALUATION" DO NOT RESULT IN THE FORMULATION OF A LAWFUL "TENTATIVE VALUATION" AND FAIL THEREFORE TO PROTECT THE RIGHTS INFRINGED BY AN UNLAWFUL ORDER, LIKE THAT OF MARCH 28, 1923.

It has already been noted (*supra*, 103-8) that each "tentative valuation" is the culmination of the first stage in the process provided for by Section 19a and, supplemented by a protest from a party in interest, the foundation and beginning of a second stage. An examination of paragraph (i)—*R. 4-5*—which provides for proceedings upon a protest to a "tentative valuation," will show that it does not contemplate the emergence from these proceedings of a new, revised or corrected "tentative valuation." On the contrary, these proceedings have for their object the determination of a "final valuation," which may be identical with the "tentative valuation" or a more or less modified and corrected form of the latter. The law is that—

"If after hearing any protest of such tentative valuation under the provisions of this Act, the Commission shall be of the opinion that its valuation should not become final, *it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof*"
—R. 5, Italics ours.

It seems clear, from the foregoing, as well as from the meticulously detailed definition of the "tentative valuation," which precedes paragraph (i), that the Congress intended that the parties in interest, *i. e.*, the carrier or the carriers concerned and the public concerned, should always have a lawful "tentative valuation" on which to base any necessary protest. In other words, the protest and the subsequent proceedings were intended to correct errors of fact and not to correct errors of law or arbitrary refusals (which are also errors of law) to include property that ought to be valued as part of the carrier's property, like that specified in paragraphs XIII and XIV (R. 8-9) of appellants' petition. With regard to this particular property, if appellants could be deprived of their right to a "tentative valuation" thereof, they would never have, as to such property, the benefit of the process defined by the law for arriving at a "final valuation," even though in its order fixing such "final valuation" the Commission might see fit to include something for these important portions of appellants' common carrier system. Appellants consider that they are entitled to the statutory opportunity to protest, if they deem necessary, to a "tentative valuation" conforming

with the law and showing all the facts required by the law as to the property excluded in the order of March 28, 1923, as well as to their other property. But such opportunity could never be secured by means of the protest provided for in paragraphs (h) and (i)—*R. 4*—or the proceedings upon such a protest.

The Commission has repeatedly been asked to withdraw or re-issue "tentative valuations," on account of errors of law, but it does not appear that such relief has ever been accorded. In the *Texas Midland case, supra*, the Commission noted that a motion had been made and it was overruled, saying:

"Together with its protest the carrier submitted a motion praying that all further proceedings be stayed and postponed until the tentative valuation required by law shall have been made and reported, it being contended that the tentative valuation theretofore served was insufficient. However, we proceeded with a hearing upon the merits of the protests which had been filed and the motion is overruled"—75 *I. C. C.*, 1, 5.

The next valuation case was *Winston-Salem Southbound Railway, supra*, and it appears that the legality of the so-called "tentative valuation" was again questioned. The Commission concluded that the "tentative valuation" ought not to become a "final valuation," without modification, but declined to withdraw the "tentative valuation" or to make a new one, merely making its "final valuation" somewhat different. It said:

"It was protested by the carrier that the tentative valuation served upon it does not constitute the tentative valuation required by law in point of content or form. With respect to a similar tentative valuation in *Texas Midland Railroad, supra*, we have considered and determined a substantially similar objection, and following that decision, we shall alter its content and manner of arrangement in some respects"—75 *I. C. C.*, 187, 188.

In the third case, that of *Kansas City Southern Railway, supra*, failure "to report a single sum as the value of the property" was an item in the carrier's protest—75 *I. C. C.*, 223, 229. The Commission appears to have admitted the requirement but to have concluded that it might be postponed and that an incomplete "tentative valuation" could occupy the statutory position of one fully and substantially meeting the statutory definition. The Commission said:

"The carrier claims that we are required to report a single sum as the value of its property, * * *. In the *Texas Midland case*, we decided that we would ultimately, but not at that time, make a finding as to the value of carrier property for purposes under the Act to regulate commerce. We will, therefore, for the present, in this proceeding, make findings as to underlying facts with leave to the carriers and other parties to apply to be heard upon the undetermined question as to what single sums should be stated as the values of their properties. If parties should not desire

to be heard upon this point, we will in due course *complete the final valuations* of the carriers"—75 I. C. C., 223, 229, *Italics ours*.

A similar ruling was made in the valuation case of *Atlanta, Birmingham and Atlantic Railroad, supra*, upon the carrier's motion to dismiss the proceeding, pending the determination of a new "tentative valuation" in conformity with the law. The Commission said:

"* * * A decision on these motions was postponed pending consideration of the case on its merits. A similar motion was made in the *Texas Midland case*. Following the decision in that case and considering the facts appearing of record, we find that the tentative valuations served in this case comply with the provisions of the valuation act, and the motions to dismiss the proceeding and serve other and different tentative valuations are denied. We shall, however, make such alterations, modifications, or additions as the facts may warrant"—75 I. C. C., 645, 648.

See also:

San Pedro, Los Angeles and Salt Lake Railroad, 75 I. C. C., 463, 465;

Matter of the Petition of National Conference on Valuation of American Railroads, 84 I. C. C., 9, 10;

Texas Midland Railroad, 84 I. C. C., 150, 152;

Ann Arbor Railroad, 84 I. C. C., 159, 160;

Danville and Western Railway, 84 I. C. C., 227, 228;

Southern Railway in Mississippi, 84 I. C. C., 253;

Durham and South Carolina Railroad, 84 I. C. C., 313, 314-5;

Knoxville, Sevierville and Eastern Railway, 84 I. C. C., 329.

It is seen, therefore, that appellants have been substantially injured, and are threatened with substantial injury, as the result of an order formulated by the Commission in substantial violation of the statute empowering it to act. The law has been disobeyed; appellants suffer therefrom; they are threatened with further injury; it is not conceivable that they are without remedy.

FOURTH.

This is a suitable proceeding in which appellants are entitled to relief against the order of March 28, 1923.

By the Commerce Court Act (36 Stat., 539), the court which gave its name to the statute was awarded jurisdiction of suits brought "to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission." The Urgent Deficiency Act of October 22, 1913 (38 Stat., 219), transferred this jurisdiction to "the several district courts of the United States" and established the venue according to which this proceeding was begun in the District Court for the Southern District of New York.

The language of the statute is "any order" and the courts have held that orders are to be set aside when the action of the Interstate Commerce Commission—

"is arbitrary or transcends the legitimate bounds of their authority"—*Seaboard Air Line Railway v. United States*, 254 U. S., 57, 62.

Orders of the Commission are also to be set aside by the courts when they are—

"beyond its statutory power; or (3) based upon a mistake of law"—*Interstate Commerce Commission v. Northern Pacific Railroad*, 222 U. S., 541, 547.

And, as was said in the decision last quoted above:

"But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears * * * the Commission acted so arbitrarily and unjustly * * * or without evidence * * * or if the authority therein involved has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of power"—222 U. S., 541, 547.

Power to make the order, power which must be found within a statutory grant, is the question the courts must determine—*Interstate Commerce Com-*

mission v. Illinois Central Railroad, 215 U. S., 452, 470.

In the instant case the statute will be searched in vain in the effort to find a grant of power to make a "tentative valuation" departing so widely and in such fundamentally important particulars from the statutory definition. The authority granted is to comply with the statute, not to deny and evade its basic principle, namely, that the "tentative valuation" must comprehensively, and in the lawful detail, inform all parties in interest, public and corporate, of what they have to meet and overcome if they are dissatisfied with its conclusions.

See also:

Interstate Commerce Commission v. Northern Pacific Railroad, 222 U. S., 541, 547;

Southern Pacific Company v. Interstate Commerce Commission, 219 U. S., 433, 449;

Interstate Commerce Commission v. Chicago, Rock Island & Pacific Railway, 218 U. S., 88, 110;

United States v. New River Company, 265 U. S., 526, 539-541.

In several cases orders of the Commission have been set aside because it has misconstrued the meaning of such terms as "lateral branch line" and "reasonable and satisfactory through route." See:

Interstate Commerce Commission v. Delaware, Lackawanna & Western Railroad, 216 U. S., 535, 537-8;

United States v. Baltimore & Ohio Southwestern Railroad, 226 U. S., 14, 18-9;

Interstate Commerce Commission v. Northern Pacific Railway, 216 U. S., 538, 544;
Harriman v. Interstate Commerce Commission, 211 U. S., 407, 420.

Orders of the Commission may be set aside, when not in accordance with the statutory grant of power, even though those seeking relief were not parties to the proceedings before the Commission:

Interstate Commerce Commission v. Diffenbaugh, 222 U. S., 42, 49;
Skinner and Eddy Corporation v. United States, 249 U. S., 557, 562-3;
Hines' Trustees v. United States, 263 U. S., 137, 147-8;
Atlantic Coast Line Railroad v. Interstate Commerce Commission, 194 Fed., 449, 451;
Louisiana and Pacific Railway v. United States, 209 Fed., 244, 251.

Appellants recognize that there are some orders of the Interstate Commerce Commission which are exempt from judicial review. An order fixing a date for a hearing belongs to this class. Such an order was subjected to attack by suit in *United States v. Illinois Central Railroad*, 244 U. S., 82, and the Court said:

"The notice, therefore, had no characteristic of an order, affirmative or negative. It was a mere incident in the proceeding, the accident of the occasion—in effect, and, it may be contended in form, but a continuance of the hear-

ing. The fact that the continuance was to another day and place did not change its substance * * *"—244 U. S., 82, 89.

The case of *Proctor & Gamble v. United States*, 225 U. S., 282, is not much, if any, broader, when considered in the light of the facts involved and the question really at issue. Appellants had complained to the Commission of certain demurrage charges for undue detention of freight cars and the Commission, after hearing, had determined that these charges were reasonable and lawful and dismissed the complaint, entering no order except one of dismissal; negative, therefore, both in form and substance. Thereupon, the defeated complainant before the Commission began a suit in the Commerce Court *to set aside this order of dismissal*. The Commerce Court held that it had power, in a proper case, to review such an order, but that, in the case before it, the Commission had judged rightly upon the facts and law and, hence, the Commerce Court, in its turn, denied relief and dismissed Proctor and Gamble's petition. Appeal was taken from the Commerce Court to the Supreme Court, by Proctor and Gamble, and the judgment of the Commerce Court was affirmed, although the Supreme Court took occasion to say that an order of the Commission dismissing a complaint was not intended to be reviewed by the Commerce Court. It is apparent that to have decided otherwise would have been to exercise the administrative discretion conferred on the Commission, *i. e.*, to have decided that the charges complained against were unreasonable. Plainly, there is no reason or authority for extending the declarations made in this

case to an order, affirmative in form and substance, like that now in issue. The proper scope of the decision in the *Proctor and Gamble case*, *supra*, is indicated by *Manufacturers' Railway Company v. United States*, 246, U. S., 457, in which the Court said:

"Whether a preference or advantage or discrimination is undue or unreasonable or unjust is one of those questions of fact that have been confided by Congress to the judgment and discretion of the Commission (*Interstate Commerce Commission v. Alabama Midland Ry. Co.*, 168 U. S., 144, 170), and upon which its decisions, made the basis of administrative orders operating *in futuro*, are not to be disturbed by the courts except upon a showing that they are unsupported by evidence, were made without a hearing, exceed Constitutional limits, or for some other reason amount to an abuse of power. This results from the provisions of Sections 15 and 16 of the Commerce Act as amended in 1906 and 1910 (34 Stat., 589-591, c. 3591; 36 Stat., 551-554, c. 309), expounded in familiar decisions. *Interstate Commerce Commission v. Illinois Central R. R. Co.*, 215 U. S., 452, 469-470; *Interstate Commerce Commission v. Union Pacific R. R. Co.*, 222 U. S., 541, 547; *Proctor & Gamble Company v. United States*, 225 U. S., 282, 297-298; *Interstate Commerce Commission v. Louisville & Nashville R. R. Co.*, 227 U. S., 88, 91.

"In the present case the negative finding of the Commission upon the question of undue

discrimination was based upon a consideration of the different conditions of location, ownership, and operation as between the Railway and the Terminal—28 I. C. C., 104, 105; 32 I. C. C., 102. The conclusions were reached after full hearing, are not without support in the evidence, and we are unable to say that they show an abuse of discretion. It may be conceded that the evidence would have warranted a different finding; indeed the first report of the Commission was to the contrary; but to annul the Commission's order on this ground would be to substitute the judgment of a court for the judgment of the Commission upon a matter purely administrative, and this cannot be done—*United States v. Louisville & Nashville R. R. Co.*, 235 U. S., 314, 320; *Pennsylvania Co. v. United States*, 236 U. S., 351, 361. * * *

"It hardly can have escaped attention that the real complaint of appellants respecting the order now under consideration is directed not to what the order requires to be done, but to what it does not require. It granted a part of the relief for which appellants had applied to the Commission. Recognizing the Railway as a common carrier to which allowances and division might be accorded by the trunk lines, and that through routes were in operation between the Railway and those lines, it fixed the maximum joint rates, and went no further for the present. The real ground for resorting to the courts in this case is the failure to fix divisions. In effect the District Court was asked to perform a function specifically con-

ferred by law upon the Commission. But that court has only the same jurisdiction that formerly was vested in the Commerce Court (*Act of June 18, 1910, c. 309, 36 Stat., 539; Act of October 22, 1913, c. 32, 38 Stat., 208, 219*); and it is settled that this does not permit the court to exercise administrative authority where the Commission has failed or refused to exercise it, or to annul orders of the Commission not amounting to an affirmative exercise of its powers—*Proctor & Gamble Co. v. United States, 225 U. S., 282, 292, et seq.*—*246 U. S., 457, 481-3.*

Determination of value, under statutes of the character of the Valuation Act, is a function legislative in character—*Keller v. Potomac Electric Power Company, 261 U. S., 428, 440-4.* It follows, in accordance with the authorities herein cited, that when it is delegated to an administrative tribunal, like the Commission, the “wholesome rule” that the statutory method must be substantially adhered to is applicable and enforceable. That is all that appellants seek in this proceeding.

Reviewing, very recently, the cases in which it has been held that certain orders of the Commission are not subject to review, this Court said:

“This Court declined to interfere because to do so would have involved exercise by it of the administrative function of granting the relief which the Commission, in the exercise of its jurisdiction, had denied”—*Chicago Junction Case, 264 U. S., 258, 264.*

The real test, upon an application to enjoin or set aside an order of the Commission, is whether

granting the relief sought would constitute an exercise by the Court of any administrative function that has been properly *delegated to the Commission*. A suspension or setting aside of the order of March 28, 1923, or an injunction in accordance with the prayer of appellants' petition (*R. 12*), would not amount to such an exercise of non-judicial power. Its substantial result would be merely to require the Commission to make a new "tentative valuation" in conformity with the authority granted to it by Congress. Indeed the substantial result of a permanent injunction in the instant case might go one step farther and *correct a condition which some members of the Commission regard as pregnant with calamity*. With the concurrence of Mr. Commissioner Cox, Mr. Commissioner Potter said, in a late dissenting opinion:

"As we are now doing our work, it will be necessary, as I see it, to take practically all our reports into the courts * * *. This will be the natural consequence of giving conclusions and withholding reasons and arriving at aggregate figures without showing how we reach them. * * * The expense and delay will be frightful. * * * *Correct practices now would avoid the calamity for which we are headed*"—*Florida East Coast Railway*, 84 I. C. C., 25, 45, Italics ours.

The order now before this Court is a *final order in the sense that it establishes the only "tentative valuation" which the appellants can obtain from the Commission if it is treated as a "tentative valuation"* and is not set aside in this proceeding. And a "tentative valuation" is as final, as a "tenta-

tive valuation," and for the purposes for which it is made, as any order of the Commission can be—*Prendergast v. New York Telephone Company*, 262 U. S., 43, 49. It is the foundation for proceedings upon a protest, it may ripen into a "final valuation," and, even as a "tentative valuation," it is used by the Commission for the purposes of Section 15a of the Interstate Commerce Act and other purposes. It is a definite, and, in this case, an unwarranted and injurious, exercise, or attempted exercise, of the legislative function delegated to the Commission.

The situation here disclosed parallels in some degree that presented by the *Prendergast case*, *supra*, in which the rates enjoined were temporary and provisional only. Deciding that case, this court said:

"Nor did the fact that the orders of the Commission merely prescribed temporary rates to be effective until its final determination, deprive the Company of its right to relief at the hands of the Court. The orders required the new reduced rates to be put into effect on a given date. They were final legislative acts as to the period during which they should remain in effect pending the final determination, * * *"—262 U. S., 43, 49.

If appellants have not been *legally* injured, and are not threatened with added and greater injury, *as matter of law*, by the order of March 28, 1923, it is, then, plainly evident that the *legal situation* is very different from the *practical situation*, for in every practical sense, they have unquestionably been injured, and are threatened with still greater injury.

The order here complained of is affirmative in the full sense in which the Supreme Court said that the order under consideration in *United States v. Atchison, Topeka & Santa Fe Railway*, 234 U. S., 476, was affirmative, that is to say, as the statute says that the carrier shall have a "tentative valuation" containing certain things and representing a certain sort and breadth of investigation :

"It is affirmative, since it refuses that which the statute in affirmative terms declares shall be granted * * *"—234 U. S., 476, 490.

It constrains appellants, if it is not enjoined, either to let a "tentative valuation," which in scarcely any particular complies with the law, ripen into a final valuation, or to proceed, in difficulty and darkness, to attack a "valuation" as to essential elements of which they are not advised, although Congress expressly provided that they should be advised fully and in detail.

And in dealing with the order of March 28, 1923; in determining the scope of the judicial power and duty in the premises; the Court will observe that, as said in the case last cited—

"an investiture of a public body with discretion does not imply the right to abuse, but on the contrary, carries with it as a necessary incident the command that the limits of a sound discretion be not transcended which by necessary implication, carries with it the existence of judicial power to correct wrongs done by such excess"—234 U. S., 476, 491.

It may be argued in this Court, as it was in the District Court, that appellants began this proceed-

ing prematurely and that it was their duty to proceed upon the order of March 28, 1923, as though it were a lawful "tentative valuation," thereby somewhat indefinitely postponing their need of relief. The delay might be long and it would certainly be injurious. Moreover, the opportunity for a lawful "tentative valuation" would have been allowed to pass and the proceedings subsequent to the "tentative valuation," which the law prescribes, would have gone forward upon an injurious, irregular and unlawful foundation. Parties are not required to submit to such damage or to such delays—*Oklahoma Natural Gas Company v. Russell*, 261 U. S., 290, 293; *Pennsylvania v. West Virginia*, 262 U. S., 553, 592-3.

It is for consideration, also, that such a postponement might have forced appellants into many successive situations in which they would have been obliged repeatedly to seek relief in the courts. In *Kansas City Southern Railway v. Interstate Commerce Commission*, 252 U. S., 178, it appears that the railway corporation in interest adopted precisely the course that is thus suggested. That is to say, the Kansas City Southern, although faced by a "tentative valuation" which it contended was unlawful, and the subsequent decision of this Court shows that it was unlawful, filed its protest and proceeded to a hearing before the Commission on such protest. At an early stage in that proceeding, the Commission refused to accept evidence as to one of the matters specified as a subject of inquiry under the Valuation Act and the carrier applied to the Supreme Court of the District of Columbia for a *mandamus* requiring the Commis-

sion to pursue the specific inquiry which it had declined. Abundant references, in this brief, to decisions of the Commission in which it has *refused*, in valuation cases, (1) to investigate original cost, (2) to apply prices current on the valuation date, (3) to include property used but not exclusively used by the carrier under valuation and owned and also used by another carrier (4) to value the whole property owned by the carrier, and (5) to follow the statutory requirements in other particulars, plainly show that these appellants, had they followed the same course as the Kansas City Southern, might have been forced repeatedly into *mandamus* proceedings, all which might successively be brought to this Court upon appeal. Compared with the prolonged and costly litigation thus indicated, the present proceeding is simple and expeditious. It requires only that the order of March 28, 1923, purporting to establish a "tentative valuation," shall be set aside, and the Commission advised as to its duties in the premises, in order that a new and lawful "tentative valuation" may issue and that the determination of value may proceed, before the Commission, upon the statutory foundation and in the orderly manner prescribed by the law.

It is to be borne in mind, as previously observed (*supra*, 78) that appellants are not now in this Court seeking that any particular value shall be attributed to their properties or that their values be determined with particular reference to, or emphasis upon, any particular class or kind of evidence of value. Their complaint is that the Commission has not proceeded in accordance with the law from which it derives all its authority.

They are convinced that, if the statute is followed; that is to say, that if the Commission shall be required to make a lawful "tentative valuation," they will be able, in proceedings before the Commission based upon such a "tentative valuation," fully to protect the values representing their properties and their rights.

One further consideration in support of the existence of power to grant the relief sought by appellants in this proceeding, will be briefly stated. In *Bluefield Water Works and Improvement Company v. Public Service Commission*, *supra*, decided by the Supreme Court on June 11, 1923, it was noted, citing *Ohio Valley Company v. Ben Avon Borough*, 253 U. S., 287, 298, that in this class of cases there is a Constitutional right "to the independent judgment of the court as to both law and facts." The extraordinary provisions of paragraph (j) of Section 19a (*R. 5*), limiting the method and scope of judicial review of any determination of "final value" under that section, suggest, at least, that unless the "tentative valuation," defined and provided for in the previous paragraphs of the section, can afford the requisite opportunity for correcting errors of law and abuses of discretion or power on the part of the Commission, the whole of Section 19a may be unconstitutional and void. Courts will construe acts of legislation in such a way as to avoid Constitutional defects and grave doubts as to Constitutionality—See; *Keller v. Potomac Electric Power Company*, 261 U. S., 428, 445.

The desirability of an early determination of the broad and general questions involved in this case

has even been indicated by appellees. The Solicitor General, in his motion to advance, submitted on March 10, 1924; granted on March 17, following, stated that—

“The facts involved and the questions sought to be raised are not unlike those now being urged before the Commission in tentative valuations of other railroad properties under Section 19a * * *. It is important that the power and authority of the Commission in such cases should promptly be determined that the progress of its work may not be retarded. The public interest is involved”—*Motion to advance, p. 2.*

These questions would merely be postponed should appellants be forced to proceed, before the Commission, upon the order of March 28, 1923, as though it established a lawful “tentative valuation”—*supra, 168-9.*

Conclusion.

The decree of the District Court of the United States for the Southern District of New York should be reversed.

All which is respectfully submitted.

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APPENDIX I.

**EXTRACT FROM REPORT AND OPINION OF
THE MAJORITY OF THE INTERSTATE
COMMERCE COMMISSION, CONCURRING
OPINION OF MR. COMMISSIONER
POTTER, DISSENTING OPINION OF MR.
COMMISSIONER EASTMAN AND DIS-
SENTING OPINION OF MR. COMMIS-
SIONER McMANAMY, IN THE MATTER
OF THE PETITION OF NATIONAL
CONFERENCE ON VALUATION OF
AMERICAN RAILROADS, 84 I. C. C., 9,
DECIDED ON NOVEMBER 13, 1923.**

a. Extract from majority report and opinion.

"The first prayer asks that we recommit each and every tentative valuation proceeding now pending to our Bureau of Valuation with directions that it shall proceed forthwith to ascertain and report:

"1. Original cost to date of each piece of property owned or used by a common carrier for common-carrier purposes;

"2. Separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier and ascertained as of the time of dedication to public use;

"3. Separately the original cost of property held for purposes other than those of a common carrier; and

"4. The amount and value of any aids, gifts, grants of rights of way, or donations, and the grants of land and money derived from the sale of any portion of such grants and the value of the unsold portion thereof at the time acquired and at the present time, as well as the amount and value of any concession and allowance made by such common carrier to Federal, State, county, or municipal governments in consideration of such aids, gifts, grants, or donations."

b. Concurring opinion of Mr. Commissioner Potter.

POTTER, *Commissioner*, concurring with modification:

"I agree with the majority that we should not grant the motion to remit proceedings to our bureau with instructions. The task of valuation is for the commission, and we may perform it ourselves or in our own way if we proceed regularly and make the findings which the law requires. I do not concur in the reasons of the majority for its action. *I think that in all of our valuations we should make the findings which the petitioner desires, and I apprehend that our final valuations are invalid when we do not do so.* There is, in ~~my~~ judgment, no serious difficulty in making the findings which petitioner suggests. The majority assumes that there is difficulty and takes far too seriously the burden of finding original cost. Like most impossible tasks, it can be

done. We are not directed to report book entries. We are to investigate and report a conclusion, and we are not relieved from that task if some one has made it more difficult by destroying records. We arrive at our conclusion the same way we arrive at other conclusions—by using the best competent evidence that is available. Where cost is the question and records are not available, evidence as to what the cost should have been is always competent. An estimate may, in fact, be much more reliable than a book entry of actual payment.

“It is necessary in order to deal with the facts peculiar to each carrier to proceed as petitioner contends, and to make findings regarding the various elements that determine value. We should announce principles in accordance with which we will rate them. In a general way they fall into classes. For instance, there is the mistake class—carriers nonessential, and which should be scrapped. Carriers have no greater right than any other enterprise to have losses due to mistakes placed upon the public. Such carriers should be valued at their realizable value on sale through being taken up or otherwise. Another class would include carriers which are essential though their showing of public service, capacity, efficiency, and earning is limited. As to these I incline to the view that, with certain limitations, original cost to date or prudent investment should be protected and is to be accepted as the measure of value. Where it appears as to an essential carrier that there is

no likelihood of it being able, under rates reasonable in its section for railways as a whole, to earn a fair return on original cost or prudent investment, because perhaps of mistake in part in location or construction, or because of exhaustion of tonnage, there, seemingly, is no warrant for valuing it above the value indicated by returns even though this be below original cost. In such case excessive value would inure to the advantage of other lines and increase the shippers' burden without benefiting the carrier directly involved. *As to such carriers knowledge of original cost is a basic requisite, and we must have it.* A third class would include carriers which have shown service, capacity, efficiency, and earnings of high degree due to the wisdom of their conception, construction, etc. Such carriers may have demonstrated that if they were not now in existence it would be wise to construct them on the basis of reproduction cost. A study might suggest that their value is equal to reproduction cost. Reproduction cost should be considered in relation to value and to some extent may have influence in determining value, but is not controlling. Certain carriers superior in a greater degree may have a value greater than reproduction cost. Past, present, and prospective earnings, amount and character of securities, and their selling values are also to be considered in rating carriers.

"Obviously selling prices of securities in lots of various sizes or even the average price over a substantial period should not alone be adopted as measuring the value of the property as a whole. This is particularly true of rail-

ways, which in recent times have borne more, perhaps, than their full share of the brunt of world disturbance and readjustment. Their securities have suffered in their market position because of the enormous amounts of Federal, State, and municipal tax-free securities and high-grade industrial bonds bearing interest at from six to eight per cent. per annum which have been issued during recent years, and because of the loss of credit and the uncertainty of return, due to the increasing national habit of regulation and political attack. Prior to 1916 the aggregate outstanding bonds of the United States, the States, and municipal subdivisions did not exceed \$4,500,000,000. There were no Federal income taxes prior to 1913, and before the war Federal income taxes were nominal. By the end of 1922 such securities outstanding enjoying advantages in taxation had increased to upward of \$32,000,000,000, and they are increasing at the rate of about \$1,000,000,000 per annum. The average pre-war rate of interest borne by about 80 per cent. of all outstanding railway bonds, being those of relatively high grade, was approximately four per cent., which is less than the average rate borne by tax-exempt Federal, State, and municipal bonds. The tax burden on such railroad bonds reduced their net yield to from two to three per cent. per annum. Market prices necessarily go down to where the interest realized by the purchaser on the price paid for the railroad bond will equal approximately that paid on the tax-free bond and the higher interest-bearing industrial

bonds. The competition of Government to obtain moneys on a higher rate basis and the absorption of investment funds by securities enjoying an advantage in net return, and the other influences affecting selling prices of securities but not real property values, have been so appalling in their effect upon the market price of railway securities that market quotations afford no reliable indication of fair property value. This is clearly illustrated by the trend of quotations.

"Notwithstanding the fact that approximately \$5,500,000,000 of new money was put into the railways between 1912 and 1922 at the rate of approximately \$550,000,000 per year, the aggregate market value of stocks and bonds of the carriers, indicated by market quotations, which was upwards of \$15,000,000,000 in 1912, declined to approximately \$13,000,000,000 in 1922. Deducting the new money from the 1922 figure would leave less than \$8,000,000,000 to represent the shrunken value indicated by market quotations of capital investment which in 1912 was regarded as worth upwards of \$15,000,000,000. This startling change seemingly reflects no change of fair values, but only the effect upon realizable or selling values caused by Government competition and the adverse conditions to which I have alluded. Market prices go up when there are more who want to buy than who want to sell, and when there are more who want to sell than who want to buy, they go down. The increased distribution of approximately \$27,000,000,000 of securities carrying

higher net return, enjoying governmental fostering and protection, in competition with lower interest-bearing railway bonds suffering from regulation, prejudice, and attack, could have no other effect than to draw the investors' money, discourage would-be buyers of railway securities, reduce their number, and 'bear' the market. With a limitation of the issue of tax-free securities, railway securities naturally will react to higher levels. While just estimate of fair property values must, for the reasons stated, far exceed the indications of security quotations, it is true, in view of the fact that all railway securities have suffered alike, that selling prices may properly be used to indicate relative values, and due note should be taken of them. Some carriers will rank higher than others of equal or greater cost.

"Only by a study of the facts and conditions as they obtain and differ among the several carriers can we rank them as they belong and find the value which the Supreme Court had in mind when, in the *Minnesota Rate cases*, it said:

"As the company may not be protected in its actual investment, if the value of its property be plainly less, so the making of a just return for the use of the property involves the recognition of its fair value if it be more than cost."

"We should determine upon and announce the principles we apply in analyzing the merit of the carriers. *The specific findings that the*

statute requires are essential. In this way an administrative body would assure consistency in its work, exhibit intelligent reasons for what it does, furnish opportunity for review of its action by other tribunals, and provide protection against its mistakes. Study of the merits and demerits of the various carriers, and thus determining their ranking and relative value in the light of sound economic principles to be openly and frankly applied by us, will avoid such calamities as will result from applying the rigid rule of reproduction cost. It would at the same time accord fair value to all carriers. If proceedings based on our findings are to avoid the defense of confiscation, we must find proper relative value and accord to each property its fair value based on its peculiar merit. We must therefore find and show that we have properly considered all the relevant elements and have given due weight thereto.

"The ascertainment of a figure of final value involves the exercise of judgment in finding the significance and relation of the various elements that determine value. It involves a judgment that acts upon factors which it grasps and is able to define. A judgment regarding the various elements must precede a judgment of the whole, and without the former the latter can not exist. Different treatment of the several elements in dealing with several lines will produce different conclusions respecting final values. Unless it is shown how the different elements were understood and treated, correction of error in the final judg-

ment as to final value is impossible. In such a case our "judgment" can only be a guess, a jumble of elements and considerations which we do not understand. It is in fact worse than a good guess, for the influence we give to one particular element leads our judgment far astray. Farms of equal area have differing values because of their location, nearness to market, fertility, efficiency, and capacity to produce and earn. One less fertile than the others may have greatest value because the market for its products makes it the biggest earner. The valuation of railway properties requires resort to the same sensible exercise of judgment brought to bear upon the several elements as they differ on different lines. Value means just that and nothing else.

"It is easy to show how we deal with the several factors in different cases. We can show as to each original cost, reproduction cost, operating results, past and present and prospective traffic, and service to the public, amount and value of its securities, and any other elements, and deal with them all in each case, so our action in all cases will be consistent. Two properties may show similar original cost and estimate of reproduction cost, similar volume of traffic handled, and similar gross earnings. The net of one may exceed the other because of the advantage of location and greater efficiency. Clearly, other things being equal, one, for this reason, may have greater value than the other. We should in a proper case find such greater value and assign the reason. Another comparison may show that down

to the present one has been at a disadvantage respecting earning showing, but it may appear that the one which has made the better showing is approaching exhaustion of tonnage and the other gives promise of increasing tonnage for many years to come. In such a case we should perhaps deal with this latter factor as offsetting the apparent disadvantage with respect to showing of past earnings. So with respect to selling prices of securities which the law requires us to consider. Selling prices of certain securities are influenced largely by the amount of earnings distributed to stockholders. It may appear, however, in one case that lower dividend payments really reflect a more conservative policy for a property of greater value. Selling prices influenced by dividend distribution may be misleading. The securities of another property may sell at high figures because of tributary tonnage that must later move, though earnings in the past have not been great. We can deal with all these elements that the law requires us to deal with and bring sound judgment to bear on each.

"If we were to consider a half dozen or more cases in a given section at the same time and make careful comparison of the different factors as they relate to each, we could act consistently. *The analysis and explanation of our action would bring out the soundness of our exercise of judgment. If it appeared that we were not consistent in our action, our error would be apparent and could be corrected.* The fact that there are many carriers to be valued does not in any sense alter our duty. Perhaps

we should consider carriers in groups and examine several at the same time. Whether we should do this or not is one of the principles and methods that we should determine upon and regarding which perhaps we should have a public hearing. In any event, *we should be willing to announce principles and apply them so that our judgment may be put to test.*

"Of course, the task is difficult. Perhaps, as has been suggested in one of our cases, it is made more difficult by the fact that it is required to be the work of 11 men. *I do not think this is true, for I think it would be made relatively simple if we were to announce principles and methods. If it be true that we are incapacitated because we are 11, that may be a reason for recommending to the Congress that the work be taken away from us and given to fewer men. But it is no reason why the work should not be done.* It is because the task is a difficult one that Congress, after we have expended many millions, continues to make appropriations for the work. The work should be done so that our results are entitled to weight, or it should not be done at all. *If we can not do it in a manner to give credence to what we do, we should inform Congress of this fact and recommend that appropriations for the work be discontinued.*

"The final and tentative valuations that we have made to date demonstrate conclusively that we have applied to the extent of domination the inelastic rule of reproduction cost without due regard to whether resulting values are fair, excessive, or too low. In following the course which I have suggested or some

modification thereof, properly worked out and determined upon, we would comply with the transportation act and the law of the land as announced in *Smyth v. Ames*, and other cases, and at the same time present to our own minds facts peculiar to each carrier in such manner as to make the most intelligent and consistent consideration of them possible. That we should proceed in this fashion was the intent of Congress when by section 19a of the Valuation Act it directed us to report—

“ ‘original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reasons for their difference, if any,’

“and to—

“ ‘report separately other values and elements of values, if any, of the property of such common carrier, and an analysis of the method of valuation employed, and the reason for any differences between any such value and each of the foregoing cost values.’

“It was for the same reason that by the same statute the Commission ‘in addition to such other elements as it may deem necessary’ was required to report—

“ ‘upon the history and organization of the present and of any previous corporation operating such property ; upon any increases

or decreases of stocks, bonds, or other securities, in any reorganization; upon moneys received by any such corporation, by reason of any issuance of stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expenses thereof; and upon the net and gross earnings of such corporation.'

"and to report—

" 'any aid, gift, grant of right of way or donation.'

"The various particulars to which I have referred were in mind when it was provided by section 15a that we—

" 'shall give due consideration to all the elements of value recognized by the law of the land for rate making purposes.'

"It must be remembered that 'the law of the land for rate making purposes,' as it existed prior to the enactment of 15a and was continued by that section, was defined in *Smyth v. Ames*, where the court said:

" 'We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original

cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating value of the property.'

"It was to prevent us from overlooking any of these elements and to force proper consideration of them, so that our action might be reviewed and the law amended if need be, that the Congress dealt so specifically in its instructions as to the findings we should make. Obedience to those instructions is not only due to the source of our authority but is essential to valid action.

"The first duty of a tribunal is to aim at just conclusions. The second is to so act that error will be discovered and corrected. No tribunal may, with propriety, act in such manner as to prevent the weighing of its reasons or the testing of its motives. It is certain that there is a large percentage of error in our valuation work. It could not be otherwise in a task of such magnitude, and particularly in view of the handicaps we are under in performing it.

"In a separate expression, which I expect to file at an early date in a valuation case, where

I shall attempt to illustrate the unsoundness and insufficiency of our procedure and point out the course I think we should follow in valuing properties, I shall explain more at length the reasons why I am generally in accord with the contentions of the petitioner as to the findings we should make.

"I am authorized to state that Commissioner Cox joins in this expression."

c. Dissenting opinion of Mr. Commissioner Eastman.

EASTMAN, *Commissioner*, dissenting in part:

"The keystone of the argument in support of this petition, as I understand it, is that the words 'original cost to date,' as they are used in Section 19a, do not mean actual cost to the carrier, but rather reasonable cost of production at the time when the property was produced. In other words, we must find what the property should have cost rather than what it did cost.

"In my dissenting statement in the *San Pedro case*, 75 I. C. C., 463, 523-567, I expressed the opinion that value for rate-making purposes should be based on the amount invested honestly and with a reasonable degree of providence in the property. To determine such investment it is necessary to know, as nearly as may be, what the property should have cost. From my point of view, therefore, it makes little difference what the meaning of

the words 'original cost to date' may be. *The fact which petitioners want reported is necessary to the determination of so-called 'final value'; we have full authority to ascertain all necessary facts, and we should exercise that authority.*

"Moreover, as I see the situation, this fact should be ascertained and reported even if it be assumed that my views as to value for rate-making purposes are incorrect. *I know of nothing more important in this connection than that the people of the country should have full information indicating:*

"1. What the railroad properties should reasonably have cost.

"2. The extent to which their construction was aided by public or private gifts, grants, and donations.

"3. The extent to which funds for their construction have been provided by surplus earnings after the payment of liberal profits to investors.

"The people should have this information so that they may fairly appraise the persistent claim that railroad owners have been oppressed; so that they may fairly weigh the meaning and possible consequences of any theory of valuation which may finally be adopted by the courts; and so that they may fairly and intelligently determine their future policy with respect to railroads in the light of experience in the past.

"*Nor do I entertain doubt that this information can be supplied with reasonable accuracy. Much of it we are now furnishing. So far as*

the reasonable cost of the railroad properties is concerned, such records as are available will be a great help, and so far as they are lacking or misleading the deficiencies can be supplied by estimates. *It is, perhaps, somewhat more difficult to estimate cost of production at the time the property was produced than to estimate cost of reproduction as of any given date, but essentially the two processes are the same. Surely the public can not fairly be penalized because the railroads have failed to keep proper records. If our appropriations are insufficient to enable us to do the work, we can advise Congress of that fact.*

"The petition also deals with the matter of 'analysis of methods.' As to this, I need only say that in the dissenting statement above referred to I endeavored to analyze fully the methods which I believe should be followed in determining value for rate-making purposes."

*d. Dissenting opinion of Mr. Commissioner
McManamy.*

McMANAMY, *Commissioner*, dissenting in part:

"To my mind one of the principal objects sought by petitioners in this case is to have included in the valuation reports a finding of original cost to date. *I can not escape the conclusion that this is specifically required by the statute and that it was the intent of Congress that this finding should be made from the best evidence available in each particular case. I*

am also of the opinion that such a finding can be made without resorting to estimates to an extent that will materially impair its value. The report does not state that this finding will be made. To the extent, therefore, that this omission may indicate that such finding will not be made, I dissent from the action of the majority."

NOTE. Mr. Commissioner Aitchison, Mr. Commissioner Esch, and Mr. Commissioner Campbell did not participate in the disposition of this matter. It appears therefore, that the "majority" report and opinion, in so far as it differs from the views expressed in the separate opinions (Mr. Commissioner Cox concurred with Mr. Commissioner Potter), represents but four Commissioners. Words in this Appendix are italicized by counsel to emphasize certain statements.

APPENDIX II.

(EXTRACT FROM REPORT AND OPINION OF THE INTERSTATE COMMERCE COMMISSION IN THE MATTER OF RATES AND CHARGES ON GRAIN AND GRAIN PRODUCTS 91 I. C. C., 105, DECIDED ON JULY 10, 1924).

"In support of these contentions the complainants presented two exhibits. One was compiled from data published by the presidents' conference committee on valuation of the Association of Railway Executives, as to certain basic figures from tentative valuations of railroads adopted and served as such by us. This exhibit purported to show, as to 151 carriers in the western district (which includes the western group and mountain-Pacific group), the relationship between the aggregate of the tentative final valuations found by us in that district and the recorded amounts in the accounts of investment in road and equipment of the same carriers. The exhibit also set forth the par value of the stock on valuation date, and the capitalized debt. The tentative valuations were as of various dates, from 1914 to 1918. The exhibit undertook to bring the investment in road and equipment from the valuation dates to December 31, 1919, by taking into account the increment in the road and equipment or property investment shown in the annual reports to the commission or in various recognized statistical publications.

"The roads taken were subdivided as follows: Class I, 19; Class II, 40; Class III, 57; terminal, 17; electric, 1; no class, 17; total 151. The witness stated that the aggregate of the tentative final valuations of these lines amounted to 78.19 per cent of the aggregate of the investment in road and equipment of the same carriers on the respective valuation dates, as stated in the books of the carriers.

"In another exhibit the percentage so deduced, 78.19 per cent, was applied to the book value \$8,818,454,872, of the roads in the western district, and the result, \$6,895,149,864, was stated as 'value for rate-making purposes as of December 31, 1919.' On this exhibit is based complainants' claim that reductions in rates on grain applicable in the western group are in harmony with the purpose of section 15a of the act, when the true net earnings are applied to the fair value of the property of carriers in the western group.

"The exhibit as originally submitted and received did not take account of additions and betterments subsequent to December 31, 1919, which the carriers claim amounted to approximately \$700,000,000. Adding that amount to the deduced value, \$6,895,149,864, complainants in their brief state a value for rate-making purposes as of December 31, 1923, of \$7,595,149,864. A return of 5.75 per cent on this amount is \$436,741,116. It was seemingly accepted that the net return for the first nine months of the calendar year should be 68.9 per cent of the year's income. Applied to the value last stated this would give \$300,900,848 as the theoretical 5.75 per cent return, on the

basis of the aggregate value put forward by complainants. The net return for the first nine months was in fact \$245,545,800.

"To the last-named amount the complainants add 'two-thirds of alleged excess maintenance charges against nine months' operation, year 1923,' \$53,922,526, and show an adjusted net operating income for the first nine months of 1923 of \$299,468,326, which is a rate of return of 5.72 per cent on the value as of December 31, 1923, computed by them as above stated.

"In determining whether this evidence is sufficient to cast serious doubt upon the validity of the values found as approximations in *Increased Rates, 1920 supra*, and followed in *Reduced Rates, 1922*, 68 I. C. C. 676, two questions are presented: (1) Whether the method pursued by complainants is sound; and (2) whether the data to which the method is applied were sufficient. In testing this evidence, broadly stated by complainants as merely casting a doubt and as not probative, obviously we are not confined to the record, but may inform ourselves in any way open under section 15a to enable us to determine whether the doubt cast upon our previous decisions is substantial or not. In *Increased Rates, 1920, supra*, page 228, we stated the method which we had employed in arriving at values in the various groups:

"While the valuation of the railroads under section 19a of the Interstate Commerce Act is still incomplete, the work has progressed so far that the results are of value and informative in reaching the determination we are now required to make. So far as the work has pro-

duced results, either as to particular roads, or as showing general tendencies and principles, we have given consideration thereto. As will appear from examination of our various valuation reports, and from section 19a itself, our investigations under that section are designed to give information as to the original cost of the property, the cost of reproduction new, the accrued depreciation, the amount of the investment, the corporate histories of the properties, the values of the lands, and other values and elements of value, if any.

“We have also before us the investment accounts of the carriers. Since 1907 there have been mandatory regulations by us as to the manner in which the investment accounts should be kept. In the administration of section 29 of the Interstate Commerce Act we have had frequent occasion to investigate, and in many cases to correct, errors apparent in the investment accounts; other errors have been discovered and brought to our attention in the progress of the work of valuation under section 19a.

“The probable earning capacity of the properties under particular rates prescribed by law and the sums required to meet operating expenses, separately and collectively, are indicated in the record.

“There is also evidence which tends to show the amount and market value of the bonds and stocks of the carriers.

“In properly appraising all these elements of value we are mindful of the fact that the carriers are operating units and going concerns. This fact has been given due considera-

tion in the light of the financial history of the transportation system of the United States, as developed by the record and as known to us. The needs for working capital, and materials and supplies on hand have been considered and allowance therefor has been made.

“From a consideration of all of the facts and matters of record, and those which, under section 15a of the Interstate Commerce Act, we are both required and authorized to consider, we find that the value of the steam-railway property of the carriers subject to the act held for and used in the service of transportation is, for the purposes of this particular case, to be taken as approximately the following:

“Eastern group, as defined by the carriers	\$8,800,000,000
“Southern group, as defined by the carriers	2,000,000,000
“Western group, as defined by the carriers, including both the Western and Mountain-Pacific groups herein designated	8,100,000,000

“Total	18,900,000,000
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“We did not find it practicable to apportion the aggregate values of the properties in the western group so as to show the values in the western and mountain-Pacific groups separately.

“The subject was again examined by us in *Reduced Rates, 1922, supra*. We then stated, page 684:

“In the instant proceeding there is little of record which goes directly to the subject of value. There has been a general acceptance by carriers and shippers of the value taken in our former determination as an appropriate basis for the purposes of the present proceeding. The respondent carriers have not attempted to show that that value should be increased, other than by appropriate consideration of the subsequent increments to the transportation plant. We have before us deductions made by certain of the State commissions and shippers, based upon the results of the valuation work under section 19a of the Interstate Commerce Act so far as announced, and also computations based upon the market value of outstanding stocks and bonds.

“More than 20 months have passed since our former determination, and in that period the valuation of the railroads under section 19a has gone forward. The work is still incomplete, but has progressed to such an extent that we may accept the results with fuller assurance, both as to particular roads and as showing general trends and principles. In our administration of various sections of the act, and in our certification of standard return for the purposes of the Federal control act, we have had occasion to make further investigation and corrections of investment accounts of the carriers.

“The various other values and elements of value, as set forth in *Increased Rates, 1920*, *supra*, pages 228-229, have been re-examined in the light of the present record and the requirements of section 15a. We find no present

reason to disturb the value taken by us in that proceeding as approximating the sums there stated, except to the extent that subsequent additions to or withdrawals from the property in service, including materials and supplies and working capital, and further depreciation, make adjustment necessary. Whether the value taken by us in 1920 should stand without consideration of these later items or not, the difference would be reflected only in fractions of per cents of the returns hereinafter indicated as the results of operation.

"An analysis of complainants' exhibits is desirable. For convenience, it has been put in tabular form. Some of the criticisms which follow doubtless grow out of the fact that the complainants did not have access to complete data. First, it will be noted that working capital, including materials and supplies, was not taken into account by the complainants, except as those amounts might be reflected indirectly by the ratios used as applied to book value. This is an omission which should be corrected. The method employed automatically scales down additions and betterments made recently, even those put in by the Government during the period of Federal control.

"The tabular analysis follows:

Item	Amount
1. The exhibit shows "tentative final valuation of I. C. C.—Property owned used and not used" of 151 carriers	\$1,277,307,418
2. Deduct therefrom the sums shown in the same tentative valuations for materials and supplies (\$18,825,476)	
And for working capital (cash on hand \$18,752,677)	
Aggregating	37,578,153
3. Remainder, representing final value of road and equipment	\$1,239,729,265
(Note.—The following are the \$10,000,000 value roads included in the foregoing. Materials and supplies and working capital are deducted in stating the values.)	
Kansas City Southern system	\$48,064,048
San Pedro, Los Angeles & Salt Lake	43,611,225
Western Pacific	65,514,739
St. Louis Southwestern of Texas.....	22,850,009
St. Louis Southwestern Railway	25,575,500
Arizona Eastern	11,725,000
Louisiana Railway & Navigation Co.	10,560,000
Oregon Trunk Railway	15,000,000
Duluth, South Shore & Atlantic	17,500,185
Chicago, Rock Island & Pacific system	318,538,996
Great Northern Railway	385,111,986
Oregon Washington Railway & Navigation Co	133,557,514
Total for 12 carriers named, 88.5 per cent of \$1,239,729,265 (item 3)	\$1,097,609,202
Total for 3 largest carriers named, 67.5 per cent of \$1,239,729,265 (item 3)	837,208,496
Total for Rock Island & Great Northern systems, 56.8 per cent of \$1,239,729,265 (item 3)	703,650,982
4. Investment in road and equipment for the 151 named carriers is stated by those carriers as	\$1,633,450,576
5. The deduction made in the exhibit is that "the percentage of total final value to total investment in road and equipment as shown by the carriers' books" is 78.19 per cent of the latter, or item 4.	
6. To obtain comparable items, the sums for materials and supplies (item 2 above) should be deducted from the tentative final valuation totals (item 1 above), and the ratio of item 4 above obtained to item 3 instead of to item 1. Item 3 is 75.89 per cent of item 4.	
7. The ratio shown in item 5 is applied to the recorded investment stated in <i>Increased Rates, 1920</i> , 58 I. C. C., at page 228, for the western group, \$8,818,454,872, and a valuation for rate-making purposes as of December 31, 1919, including working capital and materials and supplies, is deduced of	\$6,895,149,864

8. However, the valuations used in the statement of 151 roads, with the exception of 8 minor roads, aggregating only about \$2,000,000, are all valued as of 1917 or years preceding. The Rock Island, Great Northern, and Oregon-Washington, aggregating about 67 per cent of the total, were valued as of 1915; and the Kansas City Southern, San Pedro, Western Pacific, aggregating 12.5 per cent of the total, were valued as of 1914.

Applying the ratios determined by a study of aggregates, for which June 30, 1916, may be taken as the weighted mean to determine values as of a period two years later than the latest date employed in determining the ratio, and three years later than the mean of the valuation dates, automatically writes off nearly one-quarter of all sums expended for additions and betterments from the middle of 1916 to the end of 1919, although nearly all such expenditures were made by the Government itself, through the President, during the period of Federal control, and were subject to the scrutiny of the director general, the commission, the corporate carriers against whose accounts they were charged, and were subject to adjustment by referees or the Court of Claims. The method employed automatically reduced additions in cash or materials and supplies brought in, by like amounts. Per contra, it automatically fails to take full account of retirements.

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| 9. The total of investment, in road and equipment accounts for the western district as of December 31, 1917, was | \$8,571,155,635 |
| 10. Applying the ratio shown in item 6, 75.89 per cent, to the total of the road and equipment accounts as of December 31, 1917, gives as the deduced final value as of that date for the roads in the western district, not including working capital or materials and supplies | \$6,504,650,011 |

Note.—This computation is somewhat low, for the reasons stated in item 8 above, inasmuch as it writes down the investments made from valuation dates, respectively, to December 31, 1917. If June 30, 1916, be taken as a weighted mean date for the 151 appraisals, then for the roads in the western district this item might well be increased by the amount of additions and betterments to individual roads in the western district to the end of 1917. These increments were all taken into account in the computations made in *Increased Rates, 1920*.

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|---|-----------------|
| 11. The net additions to the property investment accounts of roads in the western district during 1918 and 1919 aggregated | 201,508,558 |
| 12. The total of items 10 and 11 would indicate a value as of December 31, 1919, for road and equipment, computed in the manner indicated, of | 6,706,158,569 |
| 13. Materials and supplies of the roads in the western district, as of December 31, 1919, amounted to | 234,940,106 |
| 14. Cash on hand, December 31, 1917, taken as normal for western carriers (the roads in 1919 being in the hands of the director general) | 158,539,713 |
| 15. Total value as of December 31, 1919, western district, on basis of ratio of final value of 151 roads to book value, plus actual net increment in book costs, plus actual materials and supplies, and normal cash (items 12, 13 and 14 aggregated) | \$7,099,638,388 |

"Merely correcting the value assumed in the 'modified exhibit' set out in the complainants' brief, by substituting \$7,099,638,388 for \$6,895,149,864 and adding \$700,000,000, additions and betterments since December 31, 1919, the 'value for rate-making purposes as of December 31, 1923' becomes \$7,799,638,388. A return of 5.75 per cent on the latter amount is \$448,479,207, on an annual basis. For the first nine months of the year, taken at 68.9 per cent of year's income, \$309,002,174 should be earned to accord the return on the value named at the annual rate of 5.75 per cent. The 'net return for nine months' was \$245,545,800, or at the annual rate of 4.56 per cent. If 'two-thirds of excess maintenance charges against nine months' operation, year 1923, \$53,922,526,' is taken into account as a part of the true net return for the nine months' period, as claimed by the complainants, so that the true return for the nine months was \$299,468,326, the rate of return on value as of December 31, 1923, becomes 5.57 per cent per annum, instead of 5.72 per cent, as claimed in the 'modified exhibit.' Making the corrections previously indicated as necessary, it is apparent that even accepting the complainants' figures as to net income for the nine months' period, and assuming the soundness of their contention as to excess valuation and excess maintenance charges during the year, the return was below that found by us to be reasonable, and any further reduction in revenue would increase the shortage in the fair return of the carriers in the western group.

"As shown by the monthly reports of the carriers, the net railway operating income of the Class I roads for the western district was \$374,461,384 in 1923. The returns for the smaller carriers are not yet available in their entirety. Based on past experience, it is not far amiss to assume that the net railway operating income of the Class I roads will be 98.36 per cent of the total for all roads in the district. Making this assumption, the total net railway operating income of the roads in that district in 1923 may be taken as approximately \$380,704,000, equivalent to 4.88 per cent on the value submitted by complainants, as revised. As the alleged excess maintenance charged amounts to \$80,883,791, two-thirds of which complainants claim should be amortized over the following two years, the return shown would be increased by 0.69 per cent, giving a return of 5.47 per cent for the entire year 1923 if the claim of the complainants in this regard should be accepted in full.

"Whether the results obtained by the method employed by complainants can be followed here must depend also upon whether the data used may be considered as sufficiently comprehensive and representative. The complainants exercised no selection as to roads, inasmuch as they took all of the announced tentative valuations in the order as they were approved for service, and no criticism is therefore implied that unrepresentative roads were taken. But results obtained from a study of these 151 properties are dominated by the characteristics of the Great Northern, the Oregon-Washington Railroad & Navigation

Company, and the Rock Island systems. The tentative final value found for these three dominating roads is ninety-eight per cent of the aggregate book investment on the valuation date. The tentative final values of the other roads, 148 in number, appearing in the exhibit, are but 55.3 per cent of the book investment on valuation date.

The exhibit tends to show that the final valuation of the stronger and larger roads more nearly approximates the book value than is the case with the weaker and smaller roads. In other words, there is much more inflation in the book values of the smaller roads than in the case of the larger roads used in compiling the exhibit. In the progress of our valuation work a proportionately greater number of small roads have advanced to the tentative valuation stage than the larger roads. Thus, as has been previously pointed out, the inflation of the investment account of the smaller carriers has reflected itself conspicuously in a lower ratio found in the exhibit than a normal course would indicate as proper.

"The absence of important carriers such as the Santa Fe, Chicago & North Western, Burlington, Northern Pacific, Milwaukee, Missouri Pacific, Great Western, Minneapolis & St. Louis, Missouri-Kansas-Texas, Union Pacific, Frisco, Soo Line, Oregon Short Line, Denver & Rio Grande Western, Southern Pacific, and Western Pacific minimizes the criticism inferable from complainants' exhibit.

"In *Reduced Rates, 1922, supra*, we re-examined our available valuation information, and made an attempt to utilize the results of

our investigation under section 19a of the act in so far as deemed by us to be available, as directed in terms by section 15a. It may be helpful to contrast such data with what was available to us in *Increased Rates, 1920*. While in 1922 the work of valuation was still incomplete, the results were much more informative and dependable as showing aggregates and general tendencies than when we made our former determination. This is because a far greater amount of basic material was at hand from which deductions could be made as to the whole. We were able to speak with greater confidence as to much more of the property, and needed to make deductions to a correspondingly lesser amount. The progress of the work enabled us to select more roads in which we had at least all three of the underlying reports—land, engineering, accounting.

“The following general sources of information derived from the investigation under section 19a were deemed to be available, as that term was used in the statute.

“1. Tentative valuations showing a final value, which have been approved for service and have been served by the commission upon the carriers, the States, and the Attorney General of the United States. As to many of these there are protests by the carriers, and in some cases by the States, which are yet to be heard. In many cases no protest had been filed, and the value tentatively fixed is final or will become so when an appropriate order has been entered by the commission. In these cases, the amount so stated must, under the terms of section 15a, be used. This information is sub-

stantially that compiled by the presidents' conference committee, and used by complainants as the basis for their computation.

"2. Preliminary reports by our Bureau of Valuation sufficiently complete to be furnished by it to the carriers for their criticism, as to which the three underlying reports have been completed. In certain of these cases, tentative valuation reports had been drafted, but had not yet been served. Of 137,766.45 miles of road in the western and mountain-Pacific groups, data were available as to approximately forty-three per cent.

"The results obtained by a study of the available information procured under section 19a of the act were brought to a common date by appropriate consideration of increments or reductions in investment due to extensions or new lines, additions and betterments, retirements, changes in depreciation reserves, and in working capital, including materials and supplies. Our general conclusions in *Reduced Rates, 1922, supra*, have already been quoted. Briefly, they were that, except as such readjustments were indicated to be necessary, we there found no reason to disturb the value previously taken in *Increased Rates, 1920, supra*, as approximating the sums there stated.

"The question arises as to what extent the roads included in our 1922 study were representative. While numerically not as many roads of all classes were studied by us in 1922 as were employed in compiling complainants' exhibit, many more representative important carriers were included. Roughly, for every one hundred miles of Class I roads represented in

complainants' exhibit, our study in *Reduced Rates, 1922, supra*, covered the same mileage and 135 miles in addition. Multiple-track carriers were not as fully represented in either study as those of relatively more simple characteristics.

"We had before us other matters which could not be touched upon or given weight in complainants' exhibit, such as the corrections which had been made by us in the investment accounts, the amount of accrued depreciation as carried on the books of the carriers, the actual amounts of working capital on hand, including materials and supplies, the capitalization of standard return or compensation, the amounts of stocks and bonds outstanding, and estimates of the market value of portions thereof.

"As between these two estimates the one based upon a larger proportion of the important individual roads in the class is more likely to be accurate, both because a wider selection tends to a more accurate ratio or average, and because the uncertain portion, to which the ratio or average is applied, is correspondingly lessened.

"The following independent test may be of interest. In 1923 our Bureau of Statistics brought down to the close of 1922 the various tentative valuations from the date as of which made in each case, including materials and supplies and cash on hand reported by the carrier as working capital. In the western district, which includes the western group and mountain-Pacific group, there were 22 Class I roads so treated. Their average value per mile

operated, less trackage rights, was found to be \$54,573 on December 31, 1922. This includes equipment. Applied to the mileage for the western district the value became \$6,951,115,373. Adding seven per cent to cover roads of Class II and Class III, and switching and terminal companies, it produces \$7,437,000,000. The average net railway operating income of the 22 roads in 1922 was \$1,925 per mile, while the average for all the Class I roads in the western district was \$2,494. Obviously, the machine which produces the latter average is likely to have a greater physical content and be more valuable than the plant which produces the former and lesser figure. This indicates that remaining valuations should increase rather than decrease the figure thus derived.

"We have reviewed the evidence submitted on the question of value, and nothing of record leads us to conclude that the basis of approximate value in the western district adopted by us in 1920 and reviewed in 1922 should be changed. A 5.75 per cent return on the value adopted in 1920 would amount to \$465,750,000 on an annual basis, as compared with the approximate actual return in 1923 of \$380,704,000, or at the rate of 4.7 per cent. If allowance be made for the excess maintenance urged by complainants the return for 1923 would become 5.36 per cent, still less than a fair return. Moreover, this return takes no account of additions and betterments since December 31, 1919"—*91 I. C. C., 105, 111-9.*

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**IN THE
Supreme Court of the United States**

OCTOBER TERM, 1924.

No. 212.

THE DELAWARE AND HUDSON COMPANY,
THE ALBANY AND SUSQUEHANNA RAIL-
ROAD COMPANY, RENSSELAER AND
SARATOGA RAILROAD COMPANY, ET AL.,
APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND THE
INTERSTATE COMMERCE COMMISSION,
APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN DISTRICT
OF NEW YORK.

REPLY BRIEF FOR APPELLANTS.

WALTER C. NOYES,
H. T. NEWCOMB,
Attorneys for Appellants.

November 18, 1924.

IN THE
Supreme Court of the United States

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REPLY BRIEF FOR APPELLANTS

A.

By their motions to dismiss, appellees admit that the Interstate Commerce Commission's order of March 28, 1923, in issue in this proceeding, does not comply with the statute and that, because of the deficiencies and infirmities of that order, appellants were unable "to protect their rights by an adequate and proper and sufficiently full and detailed protest"—Petition, R. 5.

Numerous defects in the order of March 28, 1923, including omissions and refusals to comply with the

law are alleged in the petition (*R. 1-13*) and it is also alleged that on account of them, appellants were unable to make the protest necessary "to protect their rights"—*R. 12*. These well-pleaded facts are, of course, admitted by the motions to dismiss—*R. 233, 234*. Appellees can not now avoid the consequences of these motions, which deprived appellants of opportunity to prove their allegations, by bald or qualified assertions that the law was obeyed or *partially* obeyed; they have formally admitted that it was not obeyed and must accept the consequences of that admission. As an illustration of an attitude that is inconsistent with the admissions made by the motions to dismiss the following extract from the *Brief for the United States* is presented.

"Close inspection of the 'tentative valuation' will demonstrate that the Commission in all respects and as far as was humanly possible strictly complied with the statute"—*Brief for the United States, pp. 13-4*.

Even if it were permissible for appellees to take the position suggested they are squarely refuted upon the record. For example, the statute requires that, as to each common carrier to be valued, the "tentative valuation"—

" . . . shall show . . . separately the value of its property in each of the several states and territories and the District of Columbia, classified and in detail as herein required"—*Section 19a, par. (c); R. 3*.

The Commission *refused* to comply with the foregoing; this was well-pleaded by appellants (*R. 8*), and is admitted by the motions to dismiss. It is "humanly possible" to comply with the foregoing; the Commission is of opinion that this provision can be complied with and has formally so stated. On December 29, 1922, its

Chairman, writing in that capacity to the President of the Senate, said, in part:

"Up to the present time we have not undertaken to segregate by states the single-sum value of interstate carriers . . . we have collected the basic material from which information as to the values separately by states can be compiled"—*Senate Document No. 284, 67th Congress, 4th Session, pp. 3-4.*

Other well-pleaded infirmities in the contested order of March 28, 1923, include (1) refusal to ascertain and report the value of the property as a whole, (2) refusal to ascertain and report anything with relation to railway property used by the carrier actually under valuation but owned and also used by another carrier, (3) arbitrary use of prices of a date or period long prior to the valuation date and materially lower than prices current at that date, (4) refusal to ascertain and report original cost except to the extent that records are available, (5) refusal to report analyses and reasons and (6) arbitrary exclusion of part of the working capital actually owned and used. Appellants submit that they have established, by their first brief, (a) that all these requirements of the statute are practicable and (b) that the refusals and omissions of the Commission are actually and in each case, based, not upon impossibility, but upon a misconception by the Commission of the law and of its relation to the subject—*Kansas City Southern vs. Interstate Commerce Commission, 252 U. S., 178, 187-8.*

B.

Numerous attempts "to confess and avoid," in briefs for appellees, show that the infirmities of the order of March 28, 1923, had their origin in "a mistaken concep-

tion by the Commission of its relation to the subject, resulting in an unconscious disregard on its part of the power of Congress and an unwitting assumption by the Commission of authority which it did not possess," closely paralleling the misconception corrected in *Kansas City Southern v. Interstate Commerce Commission*, *supra*.

In the *Kansas City Southern* case, *supra*, it appeared that the Commission had refused to attempt to ascertain a certain fact which Congress had, in terms, commanded it to include in each "tentative valuation," grounding its refusal upon its interpretation of a part of the opinion in the *Minnesota Rate* cases, 230 U. S., 252. The vice in this refusal, clearly pointed out in the cited case, was that the Commission erroneously considered itself authorized to decline to comply with a specific direction in the *Valuation Act*, *supra*, whenever its own opinion was that the data thus pointed out would not aid, or ought not to be considered, in determining value. The principle which the decision in the *Kansas City Southern* case, *supra*, applied and sanctioned is that the direction of Congress must be followed, regardless of the opinion of the Commission as to its wisdom. This principle does not appear to have become as clear to appellees' counsel as it is in the cited opinion of this Court. If it were, the Commission's counsel would scarcely have been willing to confess refusal to value to appellants some thirty-five miles of their main line (*R. 8*), and other railway property which they use (*R. 8-9*), and seek to avoid the consequences of this admission by asserting that—

"The Commission has tentatively concluded that said properties must be inventorized to the owning carriers, and that under the circumstances described it would not be proper to include any portion thereof in the inventory of said appellant."—*Brief for Interstate Commerce Commission*, p. 8.

The foregoing baldly disputes the wisdom of Congress in directing the Commission to—

“ . . . report the value of all the property owned or used by every common carrier, subject to the provisions of this Act.”—*Section 19a, par. (a); R. 2.*

and declaring, also, that—

“ . . . said Commission shall ascertain and report in detail as to each piece of property . . . owned or used by said common carrier for its purposes as a common carrier.”—*Section 19a, par. (b); R. 2.*

Similarly, the *Brief for the Commission* admits that the order of March 28, 1923, contains nothing as to the value of the property of any of appellants, “as a whole” (*Section 19a, par. (c); R. 3*), and offers, in avoidance, the following:

“The final values included in the tentative valuation under consideration here do not include, and are not intended to include, final values of any properties other than those used by appellants for common carrier purposes. The right of the Commission . . . to perform first the duties it regards as important and urgent and to defer until a later date the performance of duties it considers less important and urgent, was recognized by this court in the *New England Divisions case*, 261 U. S., 184.”—*Brief for Interstate Commerce Commission, p. 11; italics ours.*

In other words, in its current valuation work, the Commission considers that it can modify the statutory definition of a “tentative valuation” in accordance with its convictions as to “importance” and “urgency,” just as at an earlier stage it felt authorized to make another modification in view of its interpretation of the decision in the *Minnesota Rate case, supra*. The former error

was corrected in the *Kansas City Southern case, supra*. The reference to *New England Divisions case, supra*, is beside the point, for in that case the question was solely as to the nature and extent of the record required to support an order in regard to divisions of joint rates; while here the question is as to the force of a statutory direction to the Commission to do a certain thing, and as to the effect of a statutory definition, the Commission claiming authority to refuse to comply with the one and materially to vary and depart from the other. If the latter is permissible the greater portion of nine paragraphs of the *Valuation Act* constitute a mere complex of ineffective words; every definitory syllable might as well be stricken from the statute.

A parallel misconception of law by the Commission is represented by both briefs for appellees; in regard to original cost. They say:

"Owing to inadequacy of the records original cost to date was not always ascertainable *from those sources*"—*Brief for the United States, p. 11; italics ours.*

"... the Commission reported the original cost mentioned *to the extent that, in its opinion, it was possible to do so from appellants' records and other records*"—*Brief for the Interstate Commerce Commission, P. 10; italics ours.*

But the specific requirement of the statute is to ascertain and report the original cost of "each piece of property, other than land, owned or used . . . for . . . purposes as a common carrier; . . . of all lands, rights of way and terminals owned or used for the purpose of a common carrier" and of "the property held for purposes other than those of a common carriers"—*Section 19a, pars. (b), first, second and*

third; R. 2-3. There is no suggestion in the law that the Commission might exclude all evidence, except record evidence. Indeed, the direction to ascertain and report original cost is conveyed by the same sentence which contains the similar direction with regard to "cost of reproduction" and "depreciation" and by every rule of interpretation there could have been no purpose to exclude any class of evidence of "original cost" if that class of evidence was intended to be relied upon in connection with "cost of reproduction" or "depreciation." The *Brief for the United States* adds to the persuasive reasons for concluding that the Commission, in excluding all evidence of "original cost" except record evidence, has seriously misconceived the law and its own function; the following statement as to ascertainment of original cost, made by the Senator who reported the bill which became the *Valuation Act*:

" . . . You will find the opinion expressed by theorists upon the subject that to do so is impossible. But we have had in Wisconsin—they have had in the State of Washington and in other States—an experience that contradicts these theories. It is possible to ascertain this original cost"—*Brief for the United States, Appendix B, p. 68.*

The "environment in which Congress passed the *Valuation Act*" (*Brief for the United States, pp. 14-22, 42-78, 99-101*) abundantly exhibits and establishes the anxiety of Congress to provide for obtaining *all the evidences of value* through the labors assigned to the Commission—*See appellants first brief, pp. 16-9.* During the discussion on the floor of the Senate, quoted at length but not completely in the *Brief for the United States (pp. 67-78)* Senator Cummins, of Iowa, Chairman of the Committee from which the bill was reported, said:

" . . . we are simply attempting to furnish the people of the country the evidence from all

the various standpoints, which they can not furnish themselves because of the vastness of the undertaking"—*Congressional Record, February 24, 1913, p. 3802.*

And, at a later point, the same Senator said:

"This bill is intended to authorize the Interstate Commerce Commission to send its appraisers, its experts, and secure almost all the information that is conceivable with regard to the value of railway property"—*Congressional Record, February 24, 1913, p. 3803.*

On the same occasion, the late Senator Newlands, said:

"The Senator from Wisconsin (Mr. La Follette) with that great care and precision with which he always moves in matters relating to economic legislation, has insisted that we should in the bill itself present the principles of valuation and define and secure the ascertainment of the different elements of value, *every element of value which could possibly be considered by a court in determining the question of fair valuation*, and this bill, I think, is very accurately framed along that line"—*Congressional Record, February 24, 1912, p. 3806.*

The misconception of law on the part of the Commission is not only similar to that in the *Kansas City Southern case*, *supra*, but also like that corrected in the *Interchangeable Mileage case*, *United States vs. New York Central*, 263 U. S., 603, 609-610.

C.

Many important questions, affecting the general public and many carriers, can be settled in this proceeding by awarding the relief sought by appellants and thus instructing the Commission as to its duties under the Valuation

Act; any other conclusion of this proceeding must postpone the settlement of these questions and lead to prolonged litigation, unnecessary expense to the public and the carriers and vexations and troublesome delay.

Appellees advise this Court, in this proceeding, that:

“ . . . of the 1138 operating common carriers . . . it is inconceivable that any of them will be satisfied with the tentative valuation made by the Commission”—*Brief for the United States, p. 31.*

A member of the Commission, testifying before a sub-committee of the House Committee on Appropriations, on May 22, 1924, declared that to June 30, 1924, the expenditures of the Commission on valuation work would amount to \$25,363,673 and those of the railways to “something over \$70,000,000”.—*Testimony of Mr. Commissioner Lewis, Second Deficiency Appropriation bill, 1924, 68th Congress, 1st session, Hearings, etc., pp. 124, 125.*

The foregoing affords some measure of the expenditures heretofore occasioned and now in progress in connection with work under the *Valuation Act*. It is evident in this proceeding that this work is going forward without full compliance with the law and without recognition, on the part of the commission, of the consequences of such policies as, for example, those involved in (1) application of prices below those actually current on the valuation date, (2) arbitrary exclusion from valuation of portions of the common carrier properties actually used, (3) omission to consider competent evidence of original cost, (4) arbitrary exclusion from common carrier values of portions of the working capital actually used for common carrier properties, (5) refusal to ascertain and report the value of all owned properties, and others. Sometime and in some

way, all these questions will have to be settled. They can be settled here and now, by an exposition of the definition of a "tentative valuation" found in the *Valuation Act* and by requiring the Commission to obey the law and conform to the definition as expounded.

Such a conclusion in the instant case would not, as the Solicitor General fears, transfer the valuation work to the courts—*Brief for the United States*, p. 29. On the contrary, it would clarify and strengthen the valuation work of the Commission and place it upon the solid foundation of principles laid down by this Court. What would occur in the instant case, should the order of March 28, 1923, be enjoined, would be that the Commission, in due course, would enter a new order establishing a "tentative valuation" complying with the requirements of the law. There is no ground for anticipating that, with the work thus lawfully performed, appellants would find themselves disposed to protest the results. But if they should be so disposed, and should protest, the proceeding upon the protest would be before the Commission, in conformity with the statute. Appellants are not asking this Court, or any other court, to perform the functions or exercise the administrative discretion entrusted to the Commission. They are here to ask only that the Commission be constrained to exercise its great powers in the valuation of their properties in substantial conformity with the Congressional will as expressed in the statute under which the Commission acts.

No one will deny that this record raises important and far-reaching questions concerning the manner in which the Commission is operating under the *Valuation Act*. Equally, no one will deny that somewhere, at some time, appellants must have the right to have these important questions judicially determined. To determine them now will obviously avoid delay, prevent

further error by the Commission and avoid additional litigation.

The Court is asked not to overlook the fact that the departures from the requirements of the law herein complained against are shown to be deprecated and regarded as unlawful by several members of the Commission—*Appellants' first brief*, pp. 18, 28, 32, 33, 34, 54, 55, 61, 62, 64, 66, 67, 78, 93, 126, 136, 165, 173-186, 187-9. Indeed, in the *National Conference on Valuation of Railways decision*, 84 I. C. C., 9, it would appear that the action was that of but four Commissioners, or, at least, that but four members of the Commission concurred in the reasons for the action that were assigned. Such questions must, so far as they are justiciable, and every question whether an administrative body has acted in accordance with the statutory grant of power is justiciable, at some time be determined by the judiciary. They can be so determined with notable profit, at the time; their postponement involves inevitable confusion, difficulty, and loss.

D.

Some further misconceptions of appellees.

1. The initial indication of a misconception of the *Valuation Act* (Section 19a of the *Interstate Commerce Act*, 37 Stat., 701) appears in the first line of the front cover of the *Brief for the United States*, where the SOLICITOR GENERAL assumes to entitle this case "VALUATION OF COMMON CARRIER PROPERTIES." Such entitlement would be materially narrower than the purview of the statute, which, in terms, provides for ascertaining the value of—

" . . . all the property owned or used by every common carrier subject to the provisions

of this Act."—*Section 19a, par. a; R. 2; Brief for the United States, 2.*

Obviously, "property owned or used by" a common carrier is much more comprehensive than "common carrier property." To entitle this case as suggested by the SOLICITOR GENERAL would be erroneous and misleading; a sufficient title would be, "VALUATION OF PROPERTIES OF COMMON CARRIERS."

2. The Senate Committee on Interstate Commerce did not make the statement attributed to it on page 15 of the *Brief for the United States*. An effort to verify the reference to this rather enthusiastic expression shows that it was attributed, on the floor of the Senate by a Senator from Wisconsin (*Cong. Rec., Vol. 49, Pt. 4, n. 3795*), to the CULLOM Committee, which reported more than thirty-eight years ago. But that committee made no such assertion; it merely stated the charge as among those presented by witnesses it had heard—*Senate Report No. 46, 49th Congress, 1st session, pp. 180-1.*

3. As pages 8 to 9, 22 to 28, and 79 to 97 of the *Brief for the United States* contain matter relating to the amendment of June 7, 1922 (42, *Stat.*, 624), to the *Valuation Act, supra*, it must be inferred that appellees consider that this Court's attention should be directed to the fact that when, by the decision in *Kansas City Southern v. Interstate Commerce Commission*, 252 *U. S.*, 178, the Commission was advised that it should comply with the law, the Congress, upon the Commission's recommendation (*Brief of the United States, 23*), changed the law. Obviously, what Congress chose to do under such circumstances, in changing a particular clause of the Act, throws no light upon the purpose and effect of the portions of the Act that remain unchanged. Nor does this action of the Congress in relieving the Commission from

one requirement, by its excision, in any way suggest exemption from the requirements that remain; on the contrary, it emphasizes the binding character of every requirement that Congress has chosen to continue.

4. It is a misconception of law to suppose that the "usual and ordinary" meaning of a statutory term, *e. g.*, "tentative valuation," could prevail over an express definition contained in the statute in which it is found. This error appears in the *Brief for the United States* (pp. 32-3) in the form of references to "lexicographers' " definitions of the word "tentative." The Valuation Act, makes "tentative valuation" a purely statutory concept; it is particularly defined in nine paragraphs (R. 2-4). If, using this elaborate definition, the Congress had chosen to call the thing defined an "oblique valuation" or an "esoteric valuation," or anything else, the actual and substantial result would have been precisely the same—mere nomenclature can not vary any substance. Even the references to Mr. Spencer and Mr. Lewes in the footnotes (*Brief for the United States*, p. 33), however interesting as evidences of learning or industry, could have no effect to vary the definition in the statute. The Report of the Senate Committee, submitting the *Valuation Act*, *supra*, and recommending its enactment, said:

"Under the terms of the House bill, whenever the Commission completes the valuation of the property of any common carrier, it is required to give notice and grant a hearing thereon to such carrier. . . . *The Senate committee amendment designates such completed valuation as 'tentative' . . .*"—*Senate Report No. 1290, 62d Congress, 3d session, p. 9; italics ours.*

The "Senate committee amendment" referred to in the foregoing was adopted and the bill as amended, was passed—*Brief for the United States*, 21. It is futile

to look beyond the Act for a definition that it completely contains.

5. The Interstate Commerce Commission, as one of appellees, and by its counsel, seems to attach some weight to an anticipation that appellants will not feel warranted in suggesting that a "tentative valuation" has any probative force. Referring to the assertion of the District Court that "such valuation is without any probative effect *per se*," it is said that—

"Because of the statements thus made by the lower court, *the correctness of which we feel certain will not be questioned by counsel for appellants*, we are unable to understand how it can be consistently contended that appellants or any of them will be subjected to legal injury or be harmed in any way if the order referred to is not annulled and set aside by the Court"—*Brief for Interstate Commerce Commission, p. 19; Italics ours.*

Evidently the foregoing was written without careful perusal of appellants' brief. Appellants consider that it is impossible to consider as of no probative effect, a statement of values that becomes effective if not protested and disproved and they conclude that the Commission is not going beyond the intent of Congress in holding that the "tentative valuation" is *prima facie* evidence in proceedings upon protests thereto. Moreover, they find that the Commission is every day, accepting these "tentative valuations" as evidence having great probative force, not only in valuation proceedings but in all other proceedings under its authority—*See first brief for appellants, pp. 102-152.*

In appellants' main brief it was shown that the Commission is regularly accepting the "tentative valuations" as evidence in cases involving valuation, issues of securities, leases and rates. It is now known that these "tentative valuations" are used, and intended to be used and accepted, as evidence, in cases under the so-

called "Recapture" clause of Section 15a of the Interstate Commerce Act. Honorable Ernest I. Lewis, member of the Interstate Commerce Commission, testified before a sub-committee of the House Committee on Appropriations on May 22, 1924, in support of an application of the Commission for an appropriation, in the Urgent Deficiency bill, of \$350,000. Among other things, Mr. Lewis, concerning proceedings under the "Re-capture" clause, said:

"We then have *tentative valuation* reports completed upon twenty-two per cent of the mileage. Now if on this list of recapture roads furnished by the Bureau of Finance we are called upon to supply valuation data, say for example, on the first one on the list, the Aberdeen & Rockfish Railroad, the first question is 'Is the *tentative valuation* completed?' If it is, we ascertain the net additions and betterments from the Order No. 3 returns for the period between the date of valuation and the recapture period. If, however, the *tentative valuation* is not completed we must immediately speed up the work on that particular road and *get out the tentative valuation* and then ascertain from the Order No. 3 returns what the property changes have been"—p 103; *italics ours.*

"Suppose we take the Big Four Railroad running through Mr. Wood's state, with its various branches. *We would take the tentative valuation*, if it had not become final, and the final valuation if it were final. *We would add to that original valuation the checked and audited summary of additions to or deductions from the properties from that date*"—p. 109; *Italics ours.*

The principal appellee, however, plainly appears to disagree with the other appellee, for the SOLICITOR GENERAL offers, as one of his major propositions of law, the following:

"The *prima facie* effect of the tentative and final valuations was deliberately adopted by

the Congress after full debate"—*Brief for the United States*, p. 33.

And, Mr. Commissioner Potter and Mr. Commissioner Cox have made the following statement of fact in a dissenting opinion:

"We are constantly referring to our tentative reports and using their findings in determining the amount of allowable stock issues and otherwise in our work"—*Florida East Coast Railway*, 84 I. C. C., 25, 45.

However, this Court will not overlook the specific authority to the Commission to "utilize the results of its investigations under Section 19a of this Act, in so far as deemed by it available," contained in Section 15a of the Interstate Commerce Act—*See appellants' first brief*, pp. 136-9. Appellants conclude that the "tentative valuations" have probative force and are so used and accepted in practice that this force often becomes, in fact although it is not so in law, conclusive. They conclude also that the injury they suffer and that is threatened against them, by the order of March 28, 1923, is substantial and beyond relief save in this proceeding. Unless the order of March 28, 1923, can be set aside in this proceeding, on account of its many admitted, substantial and wilful departures from the law conferring authority to act at all in the premises, there is no departure from the statutory definition of a "tentative valuation" that can be corrected or restrained; in that case the Commission is beyond the law. Appellants are unable to believe that the creature of Congress can thus deny the Congressional will.

All which is respectfully submitted,

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Attorneys for Appellants.

CONTENTS

	Page
I. STATEMENT	1
II. THE STATUTE	2
The Valuation Act, approved March 1, 1913 (37 Stat. 701).....	2
<i>Kansas City Southern Railway v. Commission</i> , 252 U. S. 178.....	8
Amendment to Valuation Act, approved June 7, 1922 (42 Stat. 624).....	8
III. THE FACTS	9
<i>The Delaware & Hudson Co. v. United States</i> , 295 Fed. Rep. 558, 560.....	11, 12
IV. THE LIGHT OF THE ENVIRONMENT IN WHICH CONGRESS PASSED THE VALUATION ACT	14
<i>Stafford v. Wallace</i> , 258 U. S. 495, 512, 513.....	14
(a) EARLY STAGES OF THE ACT OF MARCH 1, 1913	15
(b) PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES, ACT OF MARCH 1, 1913	15
Report of Committee on Interstate and Foreign Commerce of the House of Representatives, December 3, 1912 (Cong. Rec., Vol. 49, Pt. 1, p. 47).....	15
(c) PROCEEDINGS IN THE SENATE, ACT MARCH 1, 1913	18
Report of Committee on Interstate Commerce of the Senate, February 20, 1913, on H. R. 22593, (Senate Report No. 1290, 62nd Congress, 3d Session).....	19
Statement, Representative Cooper (Wisconsin) (Cong. Rec., Vol. 49, Pt. 5, p. 4256).....	21
(d) PROCEEDINGS IN THE SENATE ON THE AMENDMENT FOLLOW- ING THE KANSAS CITY SOUTHERN CASE	22
Report of Committee on Interstate Commerce on amendment to Valuation Act (Senate Report No. 496, 67th Congress, 2nd Session, February 13, 1922).....	22
(e) PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES ON THE AMENDMENT FOLLOWING THE KANSAS CITY SOUTHERN CASE ..	25
Report of the House Committee on Interstate and Foreign Commerce on amendment to Valu- ation Act (House Report No. 744, 67th Con- gress, 2nd Session, February 28, 1922).....	26

	Page
V. THE TENTATIVE VALUATION IS NOT JUSTICIABLE.	
<i>Ex parte</i> 74, <i>Increased Rates</i> 1920, 58 I. C. C. 220, 229.....	28
<i>Kansas City Southern v. Commission</i> , 252 U. S. 178.	30
(a) ORDINARY MEANING OF WORDS	32
<i>United States v. Garbish</i> , 222 U. S. 257, 261.....	32
<i>United States v. First National Bank</i> , 234 U. S. 245, 258.....	32
Webster's Unabridged Dictionary.....	32
Standard Dictionary.....	33
Century Dictionary.....	33
(b) THE PRIMA FACIE EFFECT OF THE TENTATIVE AND FINAL VALU- ATIONS WAS DELIBERATELY ADOPTED BY THE CONGRESS AFTER FULL DEBATE	33
Statement Senator Root (New York).....	33
Statement Senator La Follette (Wisconsin).....	34
Statement Senator Cummins (Iowa).....	34
(c) THE TENTATIVE VALUATION DEPRIVES NO CARRIER OF A CON- STITUTIONAL RIGHT	35
<i>Meeker v. Lehigh Valley Railroad Co.</i> , 236 U. S. 412, 430.....	36
<i>Mills v. Lehigh Valley Railroad Co.</i> , 238 U. S. 473, 481.....	38
Commerce Court Act (36 Stat. 539, 540).....	39
VI. CONCLUSION	41

APPENDIX A

STATEMENTS OF MEMBERS ON THE FLOOR OF THE HOUSE, ACT OF MARCH 1, 1913	42
Representative Esch (Wisconsin).....	42
Representative Madden (Illinois).....	46
Representative Campbell (Kansas).....	57
Representative Cullop (Indiana).....	58
Representative Borland (Missouri).....	65

APPENDIX B

STATEMENT OF SENATOR LA FOLLETTE (WISCON- SIN) ON THE FLOOR OF THE SENATE, ACT OF MARCH 1, 1913	67
--	----

APPENDIX C

STATEMENT OF SENATOR CUMMINS (IOWA) ON THE FLOOR OF THE SENATE, ON THE AMEND- MENT FOLLOWING THE DECISION IN THE KAN- SAS CITY SOUTHERN CASE	79
---	----

III

APPENDIX D

	Page
STATEMENTS OF MEMBERS ON THE FLOOR OF THE HOUSE ON THE AMENDMENT FOLLOWING THE DECISION IN THE KANSAS CITY SOUTHERN CASE	86
Representative Newton (Minnesota).....	86
Representative Graham (Illinois).....	90
Representative Merritt (Connecticut).....	91
Representative Denison (Illinois).....	93
Representative Mapes (Michigan).....	95
Representative Hoch (Kansas).....	97

APPENDIX E

STATEMENTS OF SENATOR OWEN AND REPRESENTATIVE OLMSTED ON EFFECT OF TENTATIVE AND FINAL VALUATIONS	99
Senator Owen (Oklahoma).....	99
Representative Olmsted (Pennsylvania).....	100

CASES CITED

<i>Delaware & Hudson Company v. United States</i> , 295 U. S. 558, 560.....	11, 12
<i>Ex parte 74, Increased Rates 1920</i> , 58 I. C. C. 220, 229.....	28
<i>Kansas City Southern v. Commission</i> , 252 U. S. 178.....	8, 31
<i>Meeker v. Lehigh Valley Railroad Co.</i> , 236 U. S. 412, 430.....	36
<i>Mills v. Lehigh Valley Railroad Co.</i> , 238 U. S. 473, 481.....	38
<i>Stafford v. Wallace</i> , 258 U. S. 495, 512.....	14
<i>United States v. Garbish</i> , 222 U. S. 257, 261.....	32
<i>United States v. First National Bank</i> , 234 U. S. 245, 258.....	32

STATUTES CITED

The Valuation Act (37 Stat. 701).....	2
Amendment to Valuation Act (42 Stat. 624).....	8
The Commerce Court Act (36 Stat. 539).....	39
The Urgent Deficiencies Act (38 Stat. 219).....	39



In the Supreme Court of the United States

OCTOBER TERM, 1924

No. 212

THE DELAWARE & HUDSON COMPANY, THE ALBANY &
SUSQUEHANNA RAILROAD COMPANY, THE RENS-
SELAER AND SARATOGA RAILROAD COMPANY, ET AL.,
APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE
COMMERCE COMMISSION

APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

I

STATEMENT

The appeal is from the final decree of the District Court which sustained motions to dismiss the petition of the appellants on the ground "that there is no equity in this application to suppress a merely preliminary step in a lawful valuation proceeding." (Tr. 259, Circuit Judge Hough and District Judges Knox and Goddard concurring, Tr. 260; 295 Fed. Rep. 558.)

THE STATUTE

The first Valuation Act was approved March 1, 1913, as an amendment to the Interstate Commerce Act and designated as Section 19-a. (37 Stat. 701.) The Valuation Act, after providing "That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this act," further provided: ¹

* * * * *

(b) First. In such investigation said Commission shall ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for its purposes as a common carrier, the original

¹ The paragraphs omitted from the text are as follows:

SEC. 19a. (As amended February 28, 1920, and June 7, 1922.)

(a) That the Commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act. To enable the Commission to make such investigation and report, it is authorized to employ such experts and other assistants as may be necessary. The Commission may appoint examiners who shall have power to administer oaths, examine witnesses, and take testimony. The Commission shall make an inventory which shall list the property of every common carrier subject to the provisions of this Act in detail, and show the value thereof as hereinafter provided, and shall classify the physical property, as nearly as practicable, in conformity with the classification of expenditures for road and equipment, as prescribed by the Interstate Commerce Commission.

* * * * *

(c) Except as herein otherwise provided, the Commission shall have power to prescribe the method of procedure to be followed in the conduct of the investigation, the form in which the results of the valuation shall be submitted, and the classification of the elements that constitute the ascertained value, and such investigation shall show the value of the property of every common carrier as a whole and

cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed and of the reasons for any differences between any such value and each of the foregoing cost values.

Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and

separately the value of its property in each of the several States and Territories and the District of Columbia, classified and in detail as herein required.

(d) Such investigation shall be commenced within sixty days after approval of this Act and shall be prosecuted with diligence and thoroughness, and the result thereof reported to Congress at the beginning of each regular session thereafter until completed.

(e) Every common carrier subject to the provisions of this Act shall furnish to the Commission or its agents from time to time and as the Commission may require maps, profiles, contracts, reports of engineers, and any other documents, records, and papers, or copies of any or all of the same, in aid of such investigation and determination of the value of the property of said common carrier, and shall grant to all agents of the Commission free access to its right of way, its property, and its accounts, records, and memoranda whenever and wherever requested by any such duly authorized agent, and every common carrier is hereby directed and required to cooperate with and aid the Commission in the work of the valuation of its property in such further particulars and to such extent as the Commission may require and direct, and all rules and regulations made by the Commission for the purpose of administering the provisions of this section and section twenty of this Act shall have the full force and effect of law. Unless otherwise

the present value of the same, and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value.

Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

Fourth. In ascertaining the original cost to date of the property of such common carrier the Commission, in addition to such other elements as it may deem necessary, shall investigate and report upon the history and organization of the present and of any previous corporation operating such property; upon any

ordered by the Commission, with the reasons therefor, the records and data of the Commission shall be open to the inspection and examination of the public.

* * * * *

(g) To enable the Commission to make such changes and corrections in its valuations of each class of property, every common carrier subject to the provisions of this Act shall make such reports and furnish such information as the Commission may require.

* * * * *

(k) The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with all the requirements of this section and in the manner prescribed by the Commission, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in section sixteen of the Act to regulate commerce.

(l) That the district courts of the United States shall have jurisdiction, upon the application of the Attorney General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of this section by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of this section.

increases or decreases of stocks, bonds, or other securities, in any reorganization; upon moneys received by any such corporation by reason of any issues of stocks, bonds, or other securities; upon the syndicating, banking, and other financial arrangements under which such issues were made and the expense thereof; and upon the net and gross earnings of such corporations; and shall also ascertain and report in such detail as may be determined by the Commission upon the expenditure of all moneys and the purposes for which the same were expended.

Fifth. The Commission shall ascertain and report the amount and value of any aid, gift, grant of right of way, or donation, made to any such common carrier, or to any previous corporation operating such property, by the Government of the United States or by any State, county, or municipal government, or by individuals, associations, or corporations; and it shall also ascertain and report the grants of land to any such common carrier, or any previous corporation operating such property, by the Government of the United States, or by any State, county, or municipal government, and the amount of money derived from the sale of any portion of such grants and the value of the unsold portion thereof at the time acquired and at the present time, also, the amount and value of any concession and allowance made by such common carrier to the Government of the United States, or to any State, county, or municipal government in

consideration of such aid, gift, grant, or donation.

* * * * *

(f) Upon the completion of the valuation herein provided for the Commission shall thereafter in like manner keep itself informed of all extensions and improvements or other changes in the condition and value of the property of all common carriers, and shall ascertain the value thereof, and shall from time to time, revise and correct its valuations, showing such revision and correction classified and as a whole and separately in each of the several States and Territories and the District of Columbia, which valuation, both original and corrected, shall be tentative valuations and shall be reported to Congress at the beginning of each regular session.

* * * * *

(h) Whenever the Commission shall have completed the tentative valuation of the property of any common carrier, as herein directed, and before such valuation shall become final, the Commission shall give notice by registered letter to the said carrier, the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the Commission may prescribe, stating the valuation placed upon the several classes of property of said carrier, and shall allow thirty days in which to file a protest of the same with the Commission. If no pro-

test is filed within thirty days, said valuation shall become final as of the date thereof.

(i) If notice of protest is filed the Commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this Act the Commission shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the Commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under the Act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the Act approved February fourth, eighteen hundred and eighty-seven, commonly known as "the Act to regulate commerce," and the various acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

(j) If upon the trial of any action involving a final value fixed by the Commission, evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the Commission, or additional thereto and sub-

stantially affecting said value, the court, before proceeding to render judgment shall transmit a copy of such evidence to the Commission, and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence the Commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, modify, amend, or rescind any order which it has made involving said final value, and shall report its action thereon to said court within the time fixed by the court. If the Commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the Commission in the first instance. If the original order shall not be rescinded or changed by the Commission, judgment shall be rendered upon such original order.

Following the decision of this Court in *Kansas City Southern Railway v. Commission*, 252 U. S. 178, the Valuation Act, on June 7, 1922, was amended so as to relieve the Commission of a burden which this Court had held the original act imposed upon it (42 Stat. 624).²

² Chap. 210. An Act To further amend an Act entitled "An Act to regulate commerce," approved February 4, 1887, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the paragraph entitled "First" of section 19a of the Interstate Commerce Act, as amended, is amended by inserting after the words "In such investigation said com-

III

THE FACTS

On March 28, 1923, the Commission declared "the tentative valuations of the properties" of the appellants. (Tr. 15.) On the same day it issued notice that the Commission "has completed the tentative valuations of the properties of appellants as of June 30, 1916," and "that said valuations are set forth in the tentative valuation report which is included in the order adopting the same." The notice required appellants to file with the Commission on or before thirty days from April 12, 1923, any protests

mission shall ascertain and report in detail as to each piece of property" the words and commas following: ", other than land,"; so that said paragraph as amended shall read as follows:

"First. In such investigation said commission shall ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values."

Sec. 2. That the paragraph entitled "Second" of said section 19a is amended by striking out the comma after the words "and the present value of the same," and inserting a period in place thereof, and by striking out the words "and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value" at the end of said paragraph, so that said paragraph as amended shall read as follows:

"Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purpose of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same."

Approved, June 7, 1922 (42 Stat. 624).

which they may desire to make to such valuation or any part thereof. (Tr. 15.)

On May 10, 1923, and within thirty days from April 12, 1923, the appellants, and each of them, made and filed "their protest against and to the order in the above-entitled proceeding, and every part thereof, including any document or documents or other matter or matters that may be held or considered to have been part thereof by any reference therein contained." (Tr. 242.)

The comprehensive protest embraces fifteen full pages of the closely printed transcript. (Tr. 242-256.)

On June 13, 1923, under the Urgent Deficiencies Act (Tr. 2) the appellants filed the petition and prayed for a permanent injunction (Tr. 12) decreeing that the order of the Commission "be set aside, annulled, and suspended, and that its enforcement, operation, and execution, and the entry of any order based thereon fixing any final value, and the entry of any order fixing final value before a lawful tentative valuation has been made, and the use of any final value based upon said order by said Commission in any proceeding before said Commission and by said Commission in any judicial proceeding, be forever enjoined." (Tr. 12.)

One of the main charges, if not the main charge, in the petition is that the Commission has not ascertained or reported, in detail or otherwise, "any original cost to date" as to each piece of property other than land, owned or used for common carrier purposes. (Tr. 6.) From petition and brief of oppos-

ing counsel, one would suppose that the Commission had ignored utterly the Congressional mandate to ascertain and report that item. That the Commission exhausted its power to ascertain and report the original cost to date is disclosed by the transcript. Owing to the inadequacy of records original cost to date was not always ascertainable from those sources. As to Delaware & Hudson (Tr. 22), the Albany (Tr. 35), the Rensselaer (Tr. 40), the Vermont (Tr. 45), the Ruthall (Tr. 48), the Saratoga (Tr. 51), the Northern (Tr. 54), the Ticonderoga (Tr. 58), the Placid (Tr. 60), the Dannemora (Tr. 63). For other items, see Tr. 101, 119, 122, 125, 128, 130, 139, 149, 157, 166, 171, 173, 177, 179, 182, 185, 192, 202, 205, 214, 221, 225, 227.

The item "cost of reproduction new less depreciation" likewise was not seriously neglected if the Tentative Valuation fixed by the Commission is to be taken at its face.

The charges of the petition were fully summarized by the learned District Court, thus (Tr. 258; 295 Fed. Rep. 560):

An examination of the petition and a comparison thereof with the protest filed by petitioners shows that the substance of complaint may be summarily stated as follows: The Commission did not ascertain the original cost to date of each piece of property other than land used by petitioners for common carrier purposes; it did not report in detail the original cost of lands, rights of way, and terminals owned or used for common carrier

purposes by petitioners; it did not report the original cost and present value or either of any property held by petitioners for purposes other than those of a common carrier; it omitted certain specified railroad tracks or portions thereof which one of said petitioners is entitled to use as well as certain other railway and/or terminal adjuncts used by one of the petitioners jointly with other carriers; and it did not report the value as a whole of the properties of petitioners.

We have not set forth all the objections of petitioners, but the above are sufficient to indicate the kind of objection made, on which and by reason of which it is demanded that the "tentative valuation" be suppressed and held for naught.

Nor had the learned District Court any difficulty in quickly reaching the conclusion that the Commission had discharged the full duty required of it by the statute in declaring the tentative valuation, thus (Tr. 258, 259; 295 Fed. Rep. 560, 561):

We repeat that we regard this "tentative valuation" under the statute as an *ex parte* appraisement. Any such matter necessarily gives rise to many differences of opinion. The evident object of the statute is to ascertain for purposes of rate making and money borrowing the reasonable and probably going value of that property which is devoted to serving the public as a common carrier. What particular pieces of property are so used is oftentimes matter of opinion about which honest and well informed men may differ. As to original

cost, it is to be remembered that at least one of these petitioners can trace its corporate life backward for nearly a century; and the ascertainment of some items of original cost, as well as added cost, may be in the opinion of many if not most men a veritable impossibility.

No statute law should be held to require the impossible unless the language thereof permits of no other interpretation. It would serve no useful purpose to go into detail, but after examination this court is of opinion that the Commission's "tentative valuation" complies with the spirit of the statute, and on its face comes as near to complying with the letter as the facts permitted, in the Commission's opinion.

Argument has developed as petitioners' legal position that they are entitled to a literal compliance with the statute because the protest (treated as a pleading) puts them in the position of plaintiffs upon whom lies the burden of proving that the "tentative valuation" is erroneous, incomplete, or otherwise unjust.

We perceive no force in this objection, and think that the protest no more than serves to limit discussion of the questions of fact and law which must arise upon any such valuation.

The tentative valuation declared by the Commission is extensive. Cursory examination alone will disclose that the Commission complied with the statute. Close inspection of the "tentative valuation" will demonstrate that the Commission in all

respects and as far as was humanly possible strictly complied with the statute. Certainly that is true for the purpose of the undetermined protest.

IV

THE LIGHT OF THE ENVIRONMENT IN WHICH CONGRESS PASSED THE VALUATION ACT

In examining important statutes the light of the environment in which Congress acted is always instructive and helpful. The subject of the valuation of the property owned or used by railroad companies for common carrier purposes has been before the Congress, in various forms, for a great many years.

In *Stafford v. Wallace*, 258 U. S. 495, 512, 513, in sustaining the constitutionality of the so-called Packers and Stockyards Act of 1921, Ch. 64, 42 Stat. 159, this Court, speaking through Mr. Chief Justice Taft, said:

We have framed the statement of the case, not for the purpose of deciding the issues of fact mooted between the packers and their accusers before the Federal Trade Commission or the Committees on Agriculture in Congress, but only to enable us to consider and discuss the act whose validity is here in question in the light of the environment in which Congress passed it. It was for Congress to decide from its general information and from such special evidence as was brought before it the nature of the evils actually present or threatening, and to take such steps by legislation within its power as it deemed proper to

remedy them. It is helpful for us in interpreting the effect and scope of the act in order to determine its validity to know the conditions under which Congress acted. (*Chicago Board of Trade v. United States*, 246 U. S. 231, 238; *Danciger v. Cooley*, 248 U. S. 319, 322.)

(a) EARLY STAGES OF THE ACT OF MARCH 1, 1913

The Senate Committee on Interstate Commerce in its report when it presented the first bill to the Senate stated the evils which the bill was intended to remedy. Among other things the Committee said: "That the stock and bonded indebtedness of the roads largely exceed the actual cost of their construction or their present value, and that unreasonable rates are charged in the effort to pay dividends on watered stock and interest on bonds improperly issued." (Cong. Rec., Vol. 49, Pt. 4, p. 3795.)

In its annual reports to Congress for the years 1903, 1907, 1908, 1909, 1911, and 1912, the Commission renewed its recommendation for physical valuation (Cong. Rec., Vol. 49, Pt. 4, pp. 3795, 3796).

(b) PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES, ACT OF MARCH 1, 1913

Committee on Interstate and Foreign Commerce, 62nd Congress, on December 3, 1912, laid before the House its report on Bill No. 22593 which provided for physical valuation of the property of carriers subject to the Act to Regulate Commerce, as follows (Cong. Rec., Vol. 49, Pt. 1, p. 47):

The Committee on Interstate and Foreign Commerce, to whom was referred the bill

* For statements of Members on the floor of the House, see Appendix A.

(H. R. 22593) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, by providing for physical valuation of the property of carriers subject thereto and securing information concerning their stocks and bonds and boards of directors, having considered the same, report thereon with a recommendation that it pass.

The Interstate Commerce Commission in its annual reports has often set forth the importance of an official valuation of the property of the carriers subject to the act to regulate commerce. The difficulties encountered in the effort to correct rates through the claims as to valuation of property have been described. The opinions of the courts likewise have laid great stress upon the element of valuation as a factor in determining rates. The people not only acquiesce in those views but they desire accurate information on the subject. Perhaps at one time or another every Member of the House of Representatives who has served more than one term has voted to authorize such official valuation. It seems to be universally favored regardless of partisan lines. Not less important is the matter of information as to the stocks and bonds of the carrier corporations, the manipulation of the finances which control those carriers, and the boards of directors, stockholders, and bondholders themselves, who really give direction to all their affairs. The anomaly has grown up, gradually and unconsciously as it were, grown up in the courts themselves as well as

the commission, that public carriers are to be allowed to charge an income on what they owe as well as on what they own. Nobody else in the world with whom we are acquainted is allowed that privilege. First, there is a claim set up of the investment, actual or watered, and an income is allowed for that. Then, as a part of the fixed charges—annual burden of doing business—the interest on the bonds is considered and allowance made for that, whether the bonds sold at par or at a liberal discount, or whatever the circumstances may have been. Furthermore, financial institutions and sources either identical or more or less related secure control of the issues of stock and the boards of directors and thereby easily control the issues of bonds. Then it is not surprising that common stockholders and common directors in different corporations manage to place the bonds in the hands of common bondholders.

Whatever the evils or advantages of such financial manipulation and consolidation may be it is unnecessary in this report to discuss. The complaints of millions of shippers attest the dissatisfaction of the people. They are entitled to have the truth known. Full information, full publicity as to the true conditions of the issues of stocks and bonds, the cost to the holder, the price realized by the carriers, the disposition of the money, the facts as to the manipulations, will all shed light upon the question of correcting rates by the commission and their revision by the courts, and the information of all those things will help

the people to a correct understanding thereof. If the wrongs complained of have been exaggerated, the people will be satisfied when they know the truth. If, on the other hand, the alleged wrongs or any considerable part of them are shown by the investigation really to exist, in the light of the truth they can be corrected. It is our intention in reporting this bill that when the proposed investigation shall have revealed the truth as to the matters involved, the light shall continue to shine on all future transactions and operations as to physical property, stocks, bonds, boards of directors, and financial control. To that end the bill provides that the commission shall continue to keep itself informed by continuing the investigation as to all extensions and new constructions and improvements and all increases in physical value, so as to keep such official valuation up to date all the time. Existing law, in section 20 of the act to regulate commerce, already provides for similar work and information as to stocks and bonds, so that if this bill passes it will not only result in securing information as to present conditions but also in continuing the work so as to show forth the full truth and exact facts as to future transactions as they occur, so as to show the true condition at all times.

We hope that the bill herewith reported may meet with the approval of Congress and speedily become a law.

(c) PROCEEDINGS IN THE SENATE, ACT MARCH 1, 1913

SENATOR LA FOLLETTE (Wisconsin) member of the Committee on Interstate Commerce, on February 20,

1913, submitted the report of the Committee on valuation of the several classes of property of common carriers, which contains the following (Senate Report No. 1290, 62d Congress, 3d Session, February 20, 1913, to accompany H. R. 22593):

The amendments in the succeeding paragraphs of the bill relating to procedure are designed to make the original purposes of these paragraphs more definite and certain of administration. Under the terms of the House bill, whenever the commission completes the valuation of the property of any common carrier, it is required to give notice and grant a hearing thereon to such carrier, with a view of making any necessary corrections before such valuation becomes final. The Senate committee amendment designates such completed valuation as "tentative" for the time being and provides that notice shall be given not only to the common carriers but also to the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the commission may prescribe, stating the valuation placed upon the several classes of property of said common carrier and providing that any or all parties notified who protest shall be heard before such tentative valuation shall become final. The Senate amendment further provides that such final valuation shall be prima facie evidence in all judicial proceedings for the enforcement of the original interstate commerce act, and all amendments thereto, and in any judicial

proceeding brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

The Senate committee recommends the further amendment, that if, upon the trial of any action involving the final value fixed by the commission, evidence should be introduced regarding such valuation which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment shall transmit a copy of such evidence to the commission, and stay further proceedings in such action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same, and may fix a final value different from the final value fixed in the first instance, and may alter, modify, amend or rescind any order which it has made involving said final value, and shall report its action thereon within the time fixed by the court. If the commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original order complained of, and the court shall then proceed to render judgment thereon, as though made by the commission in the first instance. If the original order of the commission shall not be rescinded or changed by it, the court shall render judgment upon such original order.

Up to 1906 the commission had sustained 32 reversals in the Supreme Court. In 26 of

those cases the record discloses that the orders of the commission were reversed, because testimony was offered upon the trial before the court which was not offered when the case was presented to the commission.

The purpose of this amendment is to give the commission the benefit of any testimony which may be offered as to the valuation, which was not presented to the commission on its hearing of the proceeding. If the commission finds the new testimony material and important it is afforded opportunity to modify its order in the proceeding. Such modification of the order may lead to withdrawal of the appeal or to confirmation of the order by the court. In any event, it is fair to the commission and to the public, imposes no hardship upon the parties, and may work a great saving of time and expense incident to reversal and retrial.⁴

SPEAKER CLARK (Missouri), on February 27, 1913, laid before the House bill 22593, which provided for the physical valuation of the property of the carriers.

The Senate amendments were agreed to and the bill was passed with the following statement by REPRESENTATIVE COOPER (Wisconsin) (Cong. Rec., Vol. 49, Pt. 5, p. 4256):

Mr. Speaker, I take this brief opportunity to observe that the changes in public opinion and in political conduct in this Republic are sometimes very wonderful. In 1908—only four years ago—in the Republican national

⁴ For statement of Senator La Follette on the floor of the Senate, see Appendix B.

convention at Chicago, I presented a platform containing, among other things, a plank calling for the physical valuation of railroads. On this plank I demanded and secured a separate vote. The plank met with shouts of "Take it to Denver," "Socialist," and other evidences of disfavor, and received less than 30 votes out of a total of about 1,000. And yet we have just seen a bill calling for the physical valuation of railroads pass this House by a unanimous vote.

(d) PROCEEDINGS IN THE SENATE ON THE AMENDMENT FOLLOWING THE
KANSAS CITY SOUTHERN CASE

SENATOR CUMMINS (Iowa), of the Senate Committee on Interstate Commerce, on February 13, 1922, submitted the report of the Committee on the amendment to the Valuation Act, which contains the following (Senate Report 496, 67th Congress, 2d Session, Feb. 13, 1922):

It will be noted that the law, if so amended, will still require the commission to ascertain and report the present value of railroad lands, and in ascertaining that value it may use all lawful methods and include all proper elements. If, however, this amendment prevails, the commission will not be required to ascertain or report separately the excess of cost of present condemnation or of purchase over either original cost or present value.

When the commission completed its first valuation it held that it was impossible to ascertain or report as a separate item what it would cost a railroad company to acquire by condemnation or purchase its existing right

of way and lands used for carrier purposes, and therefore that it could not comply with the command of the statute directing it to report excess of cost over present value.

In reaching this conclusion the commission followed what it believed to be the ruling of the Supreme Court of the United States, announced in June, 1913, in the *Minnesota rate cases*. (230 U. S. 352.) It applied this construction of the statute to several railroads, and among them the Kansas City Southern Railway Co. That railroad company thereupon brought an action of mandamus against the commission to require it to find and report the excess cost above described. The case finally came to the Supreme Court of the United States, and that court, on March 8, 1920 (*United States ex rel. Kansas City Southern Railway v. Interstate Commerce Commission*, 252 U. S. 178), rendered a decision reversing the judgment of the court below and ordering the commission to make a finding and report in compliance with the words of the statute.

* * * * *

While the case last cited was still pending the commission recommended the change in the law which this bill proposes and it still holds that attitude toward the matter.

Since the decision of the Supreme Court in the *Kansas City Southern Railway case* the commission and the Bureau of Valuation have been attempting to comply with it. The testimony in the hearings submitted herewith show without any dispute whatever the manner in which it is making the attempt. The

commission first finds what it calls the present value of lands or lots by ascertaining the value of adjacent lands or lots and attaching the same value, area for area, to the railroad lands and lots. It then classifies the railroad property into types and uses a multiplier varying according to the type to ascertain the present cost of acquisition. For instance, take the case of the Kansas City Southern Railway. The commission found the present value of carrier lands to be \$2,609,155. By the use of various multipliers it found "the present cost of condemnation and damages in excess of present value of lands to be \$2,735,490. That means, in substance, that it used, in the average, a multiplier of two (2).

* * * * *

It is the opinion of the committee that it is not only an indefensible expenditure of public money to do the work required of the commission by that part of the statute which the bill seeks to eliminate, but the result of the work when done will be valueless and mischievous. It may be that the commission is not employing sound principles in ascertaining what the statute calls the present value of lands. If it is not, the mistake will be unfortunate, but may hereafter be corrected. It can not be corrected, however, by the insistence that the commission shall do what is absolutely impossible; namely, to ascertain what it would cost any given railroad company to acquire its present right of way or lands at the present time. In order to do this it

must be first assumed that the railroad has not been constructed and is not in operation, for it would be outrageously unjust to find a value largely contributed by the existence of the railroad and then multiply that value by 2, 3, or 4, because a right-of-way strip would cost more per acre than the adjacent farm is worth per acre.

Second. It must be assumed that the company proposing to build the railroad would be compelled to buy or condemn its lands or lots constituting its right of way. An assumption of that character can not safely be made. A considerable proportion of the right of way now being used by railroad companies was either donated or conveyed for a small consideration. Who can say that this would not happen again if the railroads were destroyed? No matter what path may be pursued in the effort to comply with the part of the statute sought to be eliminated it leads into the field of pure conjecture.⁵ (Senate Report No. 496, 67th Congress, 2nd Session, February 13, 1922.)

(e) PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES ON THE AMENDMENT FOLLOWING THE KANSAS CITY SOUTHERN CASE

REPRESENTATIVE SWEET (Iowa), of House Committee on Interstate and Foreign Commerce, on February 28, 1922, committed to the Committee of the Whole House report on the proposed amendment of the Valuation Act, which contains the following

⁵ For statement of Senator Cummins on the floor of the Senate, see Appendix C.

(House Report No. 744, 67th Congress, 2nd Session, February 28, 1922):

Section 19a of the interstate commerce act, as amended February 28, 1920, provides that the Interstate Commerce Commission shall investigate, ascertain, and report the valuation of all property owned or used by every common carrier, subject to the provisions of the interstate commerce act.

That the paragraph entitled "First" of section 19a of the interstate commerce act provides that the commission shall ascertain and report in detail as to each piece of property owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained and the reason for their differences, if any.

As paragraph "First" of section 19a now reads it renders it necessary for the Interstate Commerce Commission to investigate, ascertain, and report the original cost to date, the cost of reproduction new, and the cost of reproduction less depreciation of each piece of property owned or used by a carrier for common carrier purposes. This paragraph standing alone might be construed as including all property used for common carrier purposes. The attorneys for the railroads have so contended, notwithstanding that paragraph "Second" of section 19a of the interstate commerce act deals exclusively with land used for carrier purposes.

For the purpose of removing any doubt and of preventing the possibility of argument upon that point, the bill has for its first object the cutting out of any possible application of paragraph entitled "First" to land used for common-carrier purposes, and to accomplish that purpose paragraph "First" as amended by this bill simply inserts after the word "property" the words "other than land," so that the paragraph entitled "First" as amended by this bill required the Interstate Commerce Commission to investigate, ascertain, and report the original cost to date, the cost of reproduction new, and the cost of reproduction less depreciation of each piece of property other than land.

Paragraph entitled "First" and paragraph entitled "Second" of section 19a are confined to property used for common carrier purposes. The property used for purposes other than those of a common carrier is covered by paragraph entitled "Third" of section 19a of the interstate commerce act as amended.

The bill amends paragraph "Second" of section 19a of the interstate commerce act by striking out of said paragraph the following: "and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value."

The Interstate Commerce Commission has had great difficulty in arriving at a conclusion as to just what paragraph "Second" means taken as a whole. The commission finally came to the conclusion that the words "and separately the original and present cost of con-

demnation and damages or of purchase in excess of such original cost or present value" were intended to cover the estimates of what the railroads would have to pay for the land if they had to reacquire it, more than the value of the land at the time would be.⁶

V

THE TENTATIVE VALUATION IS NOT JUSTICIABLE

Approximately 245,000 miles of railroad are involved in valuation proceedings. Including leased lines, this mileage is owned by 1,950 corporations and operated by 1,139 corporations. In *Ex parte* 74, *Increased Rates* 1920, 58 I. C. C. 220, 229, the tentative valuation fixed by the Commission for the purpose of rate advances was approximately: Eastern group, \$8,800,000,000; Southern Group, \$2,000,000,000; Western Group, \$8,100,000,000.

Under the Valuation Act the Commission is required to give notice of all tentative valuations (1) to the carrier, (2) the Attorney General of the United States, (3) the Governor of any State in which the property so valued is located, and (4) to such additional parties as the Commission may prescribe. Thirty days are allowed in which to file protests with the Commission. No question is raised that the Commission failed to give the prescribed notice in the instant case, as the Delaware & Hudson seasonably filed its protest.

⁶ For statements of Representatives on the floor of the House, see Appendix D.

If in that posture of the proceedings the Delaware & Hudson may maintain the petition to strike down the tentative valuation, it follows that carriers may do likewise, *ad infinitum*, until all of the tentative valuations have become the subject of equity proceedings in the District Courts of the United States. The valuation of the steam railway transportation system would thus be transferred from the Commission to the courts.

Similarly, if the equity proceedings are allowed as against the tentative valuation, they would, if unsuccessful, undoubtedly be recommenced after the final valuation. So that after the time had been lost in court proceedings over tentative valuation, and the case was restored to the Commission, the litigation would be renewed in the courts on the final valuation.

The Valuation Act also provides that "all final valuations by the Commission * * * shall be published and shall be *prima facie* evidence of the value of the property in all proceedings under the Act to Regulate Commerce * * * and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission." The Valuation Act further provides that if upon the trial of any action involving a *final value* fixed by the Commission, evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the Commission, or additional thereto, and substantially affecting said

value, the court, before rendering judgment, shall transmit such evidence to the Commission and the latter shall consider the same and may fix a final value different from the one fixed in the first instance and may alter, modify, amend, or rescind any order which it has made involving said final value, and shall report its action thereon to said court within a time fixed by the court. Any amended or modified order of the Commission made on such evidence shall be treated by the court as if it were the original order. The court may then proceed to enter judgment.

If the petition of appellants may be maintained, there are (a) the hearing on the petition in the court to enjoin the tentative valuation; (b) the hearing on the protest before the Commission; (c) the hearing on the second petition in the court to enjoin the final valuation; (d) the hearing on the evidence offered before the court in judicial proceedings in which the final valuation shall be *prima facie* evidence of value.¹ Add to all of these the right to file the petition for writ of mandamus, see *Kansas City Southern v. Com-*

¹ In *Los Angeles & Salt Lake Railroad v. United States*, in Equity, No. H-44-T, District Court of the United States, Southern District of California, Southern Division, the petitioner, one of the Union Pacific Lines, has filed an original petition for a perpetual injunction against the final valuation made by the Commission for rate-making purposes in the amount of \$45,000,000 as of June 30, 1914, of the carrier's properties, as set forth in report, Valuation Docket No. 26, dated June 7, 1923, 75 I. C. C. 463.

In *United States ex rel Kansas City Southern Railway v. Commission*, at Law No. 69,065 Supreme Court of the District of Columbia, the carrier has prayed for a writ of mandamus against the Commission to compel a revision of the final valuation as of June 30, 1914, for rate-making purposes of the carrier's properties as set forth in supplemental report, Valuation Docket No. 4, dated March 4, 1924, 84 I. C. C. 113, and original report dated July 1, 1919, 1 Val. Rep. 223.

mission, 252 U. S. 178, and we will have at least five separate proceedings, through which the carriers may contest the work of the Commission under the Valuation Act which does not meet with their approval. Obviously with such unlimited judicial review the attempt at physical valuation by the Congress and the Commission will result in utter failure. The instant case is the best example.

The Valuation Act was approved March 1, 1913. March 28, 1923, approximately ten years later, the Commission declared the tentative valuation of the Delaware & Hudson properties. On May 10, 1923, the carriers filed their protest which stands undetermined before the Commission. On June 13, 1923, the injunction proceedings were commenced. If this court reverses the decree of the District Court and remands the case for hearing on the petition, it is no less than an adjudication that every other of the 1,138 operating common carriers shall have the same right as it is inconceivable that any of them will be satisfied with the tentative valuation made by the Commission.

Appellants lay before the court a tentative valuation, the finality of which has been stayed by the elaborate protest made and filed pursuant to the statute. They then ask for an injunction order or decree sweeping the whole proceeding out of the Commission and into the court for a judicial determination and revision of this tentative valuation. They exercised great caution not to relinquish their protest before the Commission. If they prevail

before the court over the Commission they may then safely abandon the protest. If they fail before the court on the merits and are denied the relief prayed, they may then go back to the Commission and on the protest attempt to prevail over the court. They are experimenting with their protest which they have transferred temporarily from the Commission to the court. They have everything to gain and nothing to lose. No statute or decision warrants such a course of procedure.

(a) ORDINARY MEANING OF WORDS

In providing for a *tentative* valuation "We must assume that the phrase was used with a consciousness of its meaning and with the intention of conveying such meaning." *United States v. Garbish*, 222 U. S. 257, 261; *United States v. First National Bank*, 234 U. S. 245, 258.

If the general rule of statutory construction is applied that words are to be given their usual and ordinary meaning, what is the meaning of *tentative*? Lexicographers are united in their definitions.

Webster's Unabridged Dictionary: *Tentative*: pertaining to, or based on, a trial or trials; experimental, as a tentative theory; testing, making a trial. Synonym: Provisional, Tentative. That is provisional which is adopted for the time being, especially in order to meet temporary conditions. That is tentative which is of the nature of a trial or experiment, as to make a provisional arrangement to adopt a tentative order of procedure.

Standard Dictionary: *Tentative*: 1. Used in making a trial; done as an experiment; founded on experiment; provisional or conjectural, as an opinion. 2 (Rare) Testing; experimenting.

Century Dictionary: ² *Tentative*: 1. Based on or consisting in trial or experiment; experimental; empirical.

(b) THE PRIMA FACIE EFFECT OF THE TENTATIVE AND FINAL VALUATIONS WAS DELIBERATELY ADOPTED BY THE CONGRESS AFTER FULL DEBATE

SENATOR ROOT (New York) on February 24, 1913, speaking before the Senate as in Committee of the Whole, said (Cong. Rec. Vol. 49, Pt. 4, p. 3804):

I wish to make a suggestion to the Senator from Minnesota. There may now be an issue raised upon which a question of value will be a relevant fact. The Interstate Commerce Commission has made an order fixing the rates, and the railway company comes into court asserting that those rates are confiscatory. Upon that issue the question of value is a relevant and material fact, is it not?

Under the provision the Senator from Minnesota has adverted to it seems to me that that question of value is not made material and relevant under any circumstances in which it is not now material and relevant. It does not broaden the jurisdiction of the court to consider that question of value at all. It

² "Neither these nor any other speculations concerning the ultimate forms can, however, be regarded as anything more than *tentative*." H. Spencer, Prin. of Sociol., § 578.

"We can imagine a variety of hypotheses to explain every unexplained phenomenon, and it is only by successive *tentatives* that we reach any reliable explanation." G. H. Lewes, Probs. of Life and Mind., I. i., § 24.

merely relates to the evidence of value in the cases where the court now can consider it and where they will then consider it. It merely puts into the trial of the question of value where it can now be tried and will then be tried new *prima facie* evidence supplied by the determination of the commission. It does not permit the court to retry that case or to review the decision of the commission under any other circumstances than they can do it now.

SENATOR LA FOLLETTE, on February 24, 1913, in explaining the Committee Report, said:

This valuation is simply *prima facie* evidence of the value, and when the case is heard upon a question of rates before the court those values are all subject to attack both by the public and by the railroad company. (Cong. Rec., Vol. 49, Pt. 4, p. 3802.)

SENATOR CUMMINS (Iowa), on February 24, 1913, speaking before the Senate, as in Committee of the Whole, said (Cong. Rec., Vol. 49, Pt. 4, p. 3804):

I think that is intended simply to enable the commission to change the order with respect to the rate that it has already made. If evidence with regard to value is developed in the court that has not been developed before the commission in its general work, and it has made an order fixing a rate upon a value which it finds to be wrong, then it is given the opportunity to change the order which is being attacked in the court, as may be required by the additional or different evidence with regard

to the value of the property. I do not think that it changes in the least degree the relation of the commission to the court. It simply furnishes, as I said in the beginning, evidence either for the railway company or for the public with regard to the value of the property that is devoted to public use—evidence that, of course, is not conclusive, and, in my opinion, it would not be competent for us to make it conclusive.

Mr. NELSON. But the Senator will concede that it changes the procedure which now prevails.

Mr. CUMMINS. I do not think it does at all; that is, if the Senator means the substance of the procedure. The railway company that complains of the action of the commission must still bring suit in a court of competent jurisdiction to annul the order of the commission. When it has brought the suit and made the issue it may take the work of the commission that is here provided for and introduce it as *prima facie* evidence of the value of the property, or the Government can take the work of the commission and introduce it as *prima facie* evidence of the value of the property. That is the only respect in which the relation has been changed.³

(c) THE TENTATIVE VALUATION DEPRIVES NO CARRIER OF A CONSTITUTIONAL RIGHT

The Valuation Act specifically provides for a judicial review of the valuation of the property used for common carrier purposes. This Court has

³ For statements of Senator Owen and Representative Olmsted see Appendix E.

repeatedly held that reparation orders of the Commission which are made *prima facie* evidence in judicial proceedings are always rebuttable and do not deprive the carrier of any constitutional right. For the Commission to make inventories and assemble statistics and information upon which to base the valuation of railway properties used for common carrier purposes and preserve the same in its archives or report it to the Congress does not constitute a justiciable subject until such valuation is brought forward as the basis upon which to determine the rates of the carriers. It is enough that the carrier shall have the right to protest the tentative valuation and to introduce new evidence as against a final valuation when the latter becomes relevant in court proceedings. If limited to that right the carrier is not without due process of law.

Circuit Judge Hough appropriately designated the tentative valuation as "a merely preliminary step." (Tr. 259.)

In *Meeker v. Lehigh Valley Railroad Co.*, 236 U. S. 412, 430, 431, this Court, speaking through Mr. Justice Van Devanter, said:

It is also urged, as it was in the courts below, that the provision in § 16 that, in actions like this, "the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated" is repugnant to the Constitution in that it infringes upon the right of trial by jury and operates as a denial of due process of law.

This provision only establishes a rebuttable presumption. It cuts off no defense, interposes no obstacle to a full contestation of all the issues, and takes no question of fact from either court or jury. *At most, therefore, it is merely a rule of evidence.* It does not abridge the right of trial by jury or take away any of its incidents. Nor does it in any wise work a denial of due process of law. In principle it is not unlike the statutes in many of the States whereby tax deeds are made *prima facie* evidence of the regularity of all the proceedings upon which their validity depends. Such statutes have been generally sustained, *Pillow v. Roberts*, 13 How. 472, 476; *Marx v. Hanthorn*, 148 U. S. 172, 182; *Turpin v. Lemon*, 187 U. S. 51, 59; Cooley's Constitutional Limitations, 7th ed. 525, as have many other State and Federal enactments establishing other rebuttable presumptions. *Mobile, &c., Railroad v. Turnipseed*, 219 U. S. 35, 42; *Lindsley v. Carbonic Gas Co.*, 220 U. S. 61, 81; *Reitler v. Harris*, 223 U. S. 437; *Luria v. United States*, 231 U. S. 9, 25. An instructive case upon the subject is *Holmes v. Hunt*, 122 Massachusetts, 505, where, in an elaborate opinion by Chief Justice Gray, a statute making the report of an auditor *prima facie* evidence at the trial before a jury was held to be a legitimate exercise of legislative power over rules of evidence and in no wise inconsistent with the constitutional right of trial by jury. And in *Chicago, &c., Railroad v. Jones*, 149 Illinois, 361, 382, a like ruling was made in respect of a statutory provision similar to that now before us.

In *Mills v. Lehigh Valley Railroad Co.*, 238 U. S. 473, 481, this Court, speaking through Mr. Justice Hughes, said:

When the Commission made the award "*as reparation*" they undoubtedly expressed the decision, as a matter of ultimate fact, that there was injury to this extent to be repaired. No other intelligent construction can be put upon their statement. If, as we have held in the second *Meeker Case*, a finding of the amount of damage as a finding of ultimate fact is sufficient, the expression of that finding is not confined to a particular formula. What the Commission decided was that the shippers were entitled to reparation—that is, to be made whole, to be compensated for a loss because of an illegal and unreasonable exaction—and the amount which they stated as the sum to be paid "*as reparation*" on the specified shipments was the amount which they found necessary to accomplish the reparation—to afford the compensation. The statute was not concerned with mere forms of expression, and in view of the decision that a finding of the ultimate fact of the amount of damage is enough to give the order of the Commission effect as *prima facie* evidence, we think that the trial court did not err in its ruling. *The statutory provision merely establishes a rule of evidence.* It leaves every opportunity to the defendant to contest the claim. But when the Commission has found that there was damage to a specified extent, *prima facie* the damage is shown; and, accord-

ing to the fair import of its decision, the Commission did find the amount of damage in this case.

Moreover, if the petition in the instant case is sustained and the judicial review of the tentative valuation is allowed, then the express provisions for judicial proceedings in the Valuation Act become submerged. Urgent Deficiencies Act (38 Stat. 219) preserved the Commerce Court Act, the enforcement of which was reposed in the District Courts. Commerce Court Act (36 Stat. 539, 540) provides:

The jurisdiction of the Commerce Court over cases of the foregoing classes *shall be exclusive*; but this act shall not affect the jurisdiction now possessed by any Circuit or District Court of the United States over cases or proceedings of a kind not within the above-enumerated classes.

If the "tentative valuation" declared by the Commission is justiciable within the meaning of the Commerce Court Act, then the jurisdiction of the District Court is *exclusive*. The provisions of the Commerce Court Act and those of the Valuation Act for judicial review may not stand together; one or the other must fall. Congress did not intend any such conflict. The express provisions of the Valuation Act being the latest enactment on the subject and the two acts not allowing of a choice, the appellants should be relegated to that right of review which was preserved to them by the Valuation Act, of which they will undoubtedly avail themselves whenever

opportunity offers. *Expressio unius est exclusio alterius.*

Again, the provision that if upon the trial in court of any action involving a *final value* fixed by the Commission evidence shall be introduced regarding such value different from that previously offered before the Commission and substantially affecting such value, the court shall stay further proceedings and transmit a copy of such evidence to the Commission, which the Commission shall consider and upon which it may fix a *final value* different from the one fixed in the first instance, and may alter, modify, amend, or rescind any order which it has made involving said final value, and shall then report its action back to the court, is the express unequivocal enactment by the Congress that the Commission and not the court is the authority upon whom the responsibility is fixed for a physical valuation of railway properties used for common-carrier purposes. The United States District Court is the duly constituted and appointed examiner to take the testimony and certify the same to the Commission for its conclusion. May the appellants thwart that provision in advance by attacking a tentative valuation?

The wisdom of the legislation is obvious. The Commission is the one central body which operates upon the transportation system as a whole. Courts function independently not only of the Commission but of each other. Differences of opinion may be limited only by the number of the scattered judges.

Even the same judge may entertain different opinions at different times. To sustain judicial review of all tentative valuations is the equivalent to an adjudication that there shall be no physical valuation of railway properties for common-carrier purposes.

VI.

CONCLUSION

The tentative valuation declared by the Commission is clearly not reviewable in the manner here undertaken and for that reason the decree of the District Court sustaining the motions and dismissing the bill should be affirmed.

JAMES M. BECK,

Solicitor General.

BLACKBURN ESTERLINE,

Assistant to the Solicitor General.

NOVEMBER 12, 1924.

APPENDIX A

(*Ante*, p. 15.)

STATEMENTS OF MEMBERS ON THE FLOOR OF THE HOUSE, ACT OF MARCH 1, 1913

REPRESENTATIVE ESCH (Wisconsin), on December 3, 1912, speaking before the House in Committee of the Whole on bill 22593, said (Cong. Rec., Vol. 49, Pt. 5, p. 38):

Before considering the methods of securing a fair valuation of railroad property, it may be of interest to discuss the reasons why such valuation should be made and the increasing popular demand for it. Floy, in his recent work on Valuation of Public Utility Properties, states these, as follows:

(a) Monopolistic control has often been used unfairly to get large earnings at the expense of the public which granted the franchise.

(b) The growing conviction that because of unfair promotion, loose methods of financing, lack of proper maintenance of property, obsolescence owing to new inventions, capitalization no longer represents the real value upon which earnings should be based.

(c) Overcapitalization, due to ignorance, to willful, intentional, unwarranted increases of securities for immediate but unfair profits.

The pending bill empowers the Interstate Commerce Commission to secure the data and report the complete financial history of every common carrier. Such history will disclose more than one instance of intentional overcapitalization as flagrant as that of the Chicago & Alton in 1898. Such overcapitalization is unjustifiable on business as well as moral grounds. Nor can the complaints of the public, burdened by extra charges to meet interest and divi-

dends on excessive and unwarranted issues of securities be met by the cry of "vested rights." There is no such thing as a vested right to exact exorbitant charges on watered stock. The public under the law is willing to pay a fair return upon the "fair value of the property" used for its convenience. But the public which pays these charges desires and is entitled to know what this fair value is and how it should be determined and upon what it should be based.

The decision in *Smyth* against *Ames*, already cited, mentions a dozen elements which should be considered in arriving at "fair value," including "cost of construction," "amount expended in permanent improvements," "present as compared with original cost of construction," and indicates that "there may be other matters to be regarded in estimating the value of the property." As this bill deals primarily with physical valuation, I shall confine myself to a discussion of those elements, such as cost of construction, or reproduction new, and depreciations, which naturally are the bases for such valuation.

PHYSICAL VALUATION

Physical valuation, once determined, will aid commissions and courts, both State and Federal, in questions relating to: First, the fixing of reasonable rates; second, taxation; third, stock and bond control. As taxation of railroad property is left to the States, and Congress has not yet granted authority to the Interstate Commerce Commission or other agency to regulate the issuance of stocks and bonds, the valuation provided for in this bill will be to furnish the commission with one of the most essential standards for the determination of the reasonableness of rates—a standard for which the commission has appealed to Congress for many years. Many different bases for the determination of value, varying with the purpose in view, have been suggested, and some have been used in the different States and by various tribunals, among these the following: (a) capitalization, (b)

cost and book account of carriers, (c) earning power, (d) market value, (e) bona fide investment added to betterments and improvements, (f) cost of reproduction, (g) present physical value, and so forth.

* * * * *

We have tried to make clear that a physical valuation is not the sole element to be considered in arriving at the fair value of railroad property, but is one of the most important and practicable of all those specified by Justice Harlan in the *Nebraska case*. Original cost, amount expended for permanent improvements and extensions, the reproduction cost, and the same less depreciation and going value, according to Chairman Roemer, of the Wisconsin commission, all are to be considered and carefully weighed.

Such work has been done in the several States by commissions authorized to do it in connection with the power to regulate rates. These Commissions, when full powered, have accomplished beneficent results. They have prevented wasteful competition, which has so often proven a burden to the public. They have systematized accounting, prevented rebates and discriminations, improved service, stabilized values, and purified politics. The Interstate Commerce Commission, in its larger field, has performed a like service to the country. The additional power granted it by this bill will make it still more effective for good.

The railroads themselves in the earliest cases, including the *Nebraska case*, were the first to demand valuations of their property when making defense against rates imposed by the legislatures of some of the Western States on the ground that they were confiscatory. Now, however, when State commissions and Congress seek to make such valuations to aid in determining the reasonableness of rates, they protest for fear such valuations will result in a reduction of their rates.

Some high railroad officials feel confident that a fair valuation of the physical properties of the railroads

of the country will disclose the fact that they are not as a rule overcapitalized, and that the present average of \$60,000 per mile will in the case of many trunk lines be exceeded by the valuations made under the provisions of this bill. Others, and perhaps the majority of them, warn the country that such valuation will result in a demoralization of securities, owing to a marked excess of the capitalized over the physically valued totals. I do not share these fears, but believe that a valuation made by officials of the experience, skill, and fairness we have a right to expect will be selected, will command the respect and approval of railroads and shippers and the general public.

In conclusion, the reasons for the enactment of this legislation may be summarized as follows:

1. As railroads are monopolies serving the public exclusively, and have in the past strengthened their control by rushing out competition, they should be subjected to such regulation as will entitle them to receive a fair return upon the fair value of their property. This bill seeks to provide a method of ascertaining such fair value.

2. If railroads will not or cannot furnish accurate data as to fair value, the Government must be given the power to make a valuation of its own.

3. The Hepburn Act of 1906 gave the Interstate Commerce Commission the power to fix rates and determine their reasonableness, but no standards were established as a basis for the exercise of this power. This bill, by specifically authorizing it to make a physical valuation, supplies it with one, if not the most efficient, standard.

4. The amended interstate commerce act of 1910, by still further increasing the commission's powers to include the suspension of a rate, or rates, or schedule of rates, pending a hearing, makes more imperative than ever the authority to make a physical valuation which shall supply the data for the proper determination of such hearing. While a single rate

or group of rates may not require such valuation to be made, the applications for advances of rates made by railroads from all parts of the country two years ago, many of which are still pending, clearly show not only the advantage but the necessity of fortifying the commission with the data obtained by such a valuation for the orderly and prompt transaction of the vast amount of business before it.

5. Although the Interstate Commerce Commission has not yet been given control over the issuance of stocks and bonds, the pending bill only authorizing an investigation of the financial history of the railroads, a physical valuation should precede the granting of such control. Capitalization should bear some fixed relation to such valuation.

6. In every strike of railroad employees and in the threatened strike of the engineers last summer and in the strike now threatened by the firemen on all lines east of the Mississippi and north of the Potomac and Ohio, the rates charged and the income derived therefrom are pivotal points in the controversy. The employees contend that the net earnings justify an increase of their wages. The railroads contend that the rates limited by the commission will not permit the increase demanded. A fair valuation, conceded to be such by the public as well as by the railroads and their employees, will be a principal factor in securing the speedy and satisfactory adjustment of such disputes. (Cong. Rec., Vol. 49, Pt. 5, p. 43).

REPRESENTATIVE MADDEN (Illinois), on December 3, 1912, concerning the Committee Report, said (Cong. Rec., Vol. 49, Pt. 1, p. 55):

The people all over the country are looking forward to the time when everybody will understand whether a rate is reasonable or unreasonable. Up to the present time there has been no sufficient information given to the public to enable the public to understand whether the rates are right or wrong. Everybody believes they are wrong in most cases. The railroad companies' representatives throughout

the United States are constantly arguing for power to levy higher rates on the theory that the wages of the men employed by the railroad companies are much higher now than they used to be and the volume of work done by each man employed is much less, and that the total aggregate cost per ton of freight carried by the railroads of the country is greater than it ever was before, and that the dividends paid on the capitalization of the roads are much less than they ever were before. The question arises whether railroad rates should be based upon the amount of money to be earned to be applied to the payment of dividends or whether the rate should be made upon the basis of the actual value of the property of the railroads, regardless of whether the property is considered in a going concern or not. My own judgment is that where a railroad claims to be running at a loss and its capitalization is more than twice what it ought to be the question of gain or loss in such cases ought not to be taken into account. If the railroad rates are fixed on the basis of valuation provided by the first section of this bill, it looks to me that in some cases they will be fixed at much higher rates than they ought to be fixed at, because this bill provides that the commission should ascertain the value of the property for railroad purposes or for rate-making purposes, and then in the case of the railroad referred to by my friend from Pennsylvania (Mr. Olmsted), where it was required to construct expensive tunnels to get into Baltimore, if the rate were made on the basis of cost to that road in order that it might be able to earn dividends the earnings power of the railroad running in competition with it would be twice as much as it ought to be.

I believe that in many cases the values of railroad properties will be found to be greater than the actual capitalization of the railroad. But, on the other hand, I believe that in many other cases the values of the railroad properties will be found to be materi-

ally less. At any rate, whether it is higher or lower, the public is entitled to the information which this bill will enable the commission to obtain, and I am very glad that the time has come when Congress feels that the legislation demanded for so long a time by the people ought to be enacted into law.

* * * * *

I now advance another proposition. It is neither expedient, just, nor economical to ascertain the values of all the railroad properties devoted to interstate commerce, and it will best subserve public as well as private interests if the investigation and valuation be by entire organized railway systems and limited to the important and dominating even among these. With all the light obtainable from every source, with a force of engineers, experts, and other helpers equal in number to the Standing Army of the United States at work all the time gathering and tabulating data, even if when assembled any finite mind could grasp it all, the question of what is a reasonable rate or a just and reasonable schedule of rates would still remain a matter of opinion and judgment. Compromise and the arbitrary striking of averages are an incident of all rate fixing. It is as impossible now to fix rates which in the future will pay all outlays and leave a definite sum for dividends as it would be to fix next year's prices for eggs or potatoes, and for almost indently the same reasons. All those railway economists, whether holding professorships in colleges or seats in Congress or on the Interstate Commerce Commission, who expect to make or to see made of rate fixing an exact science or even susceptible of becoming subject to any definite rules or standards are doomed to disappointment. Nevertheless it is possible to fall into habits of thought and accept principles and standards which, being conformed to in practice, destroy public justice and deeply wrong

the freight-paying public. (Cong. Rec., Vol. 49, Pt. 1, p. 56.)

* * * * *

The true rule is that if the public be well served at fair and reasonable rates, or rates fixed under really competition conditions, then there should be no reduction of rates so long as they produce only a reasonable return on the property. This rule of rate making compels the rate-fixing authority to begin at the shipper's side of the question and to only take up the carrier's side if that becomes necessary; that is to say, when it is alleged that fair and reasonable rates for the shipper are confiscatory of the carrier's property. It is no valid objection to rates which are only fair and reasonable from the shipper's standpoint that they are unreasonably low from the carrier's standpoint, because even unreasonably low rates may yield some profit, however small, and be therefore nonconfiscatory. What the courts and commissioners have done in recent years was to start the consideration of each question from the carrier's side; to start with this heresy that at all events, aside from all other considerations and regardless of the effect upon the fortunes of shippers, the carrier was entitled not merely to protection against a confiscatory rate, but to a return, usually placed at or a little above the rate of interest on mortgage loans. To give such a rule universal application is to guarantee not only the solvency but the financial success of the most recklessly, dishonestly, and wastefully managed roads in the country, or those which but for the Government sanction thus given to exploitation of the public would have to go into liquidation and reorganize on a sound and honest basis. An exemplification of the practical application of this modern theory is seen in the *Spokane rate case*, where the commissioners decided that rates which satisfied the financial needs of the Northern Pacific and gave the holders of its enormously inflated stocks the dividends which they

demanded were just and reasonable, though the same rates in the case of its competitor, the Great Northern, yielded nearly twice the same dividend rate in addition to enabling it to pile up a large surplus for extensions and outside investments. (Cong. Rec., Vol. 49, Pt. 1, p. 58.)

* * * * *

But in the case of what are known as the trunk lines, there is presented a striking and important illustration of results flowing from the adoption by the commission of the "constant-profit" theory of rate making. The rates of the Pennsylvania and New York Central, whose lines reach all the important business centers of the West, have been fixed exclusively by the railroad managements themselves, with no limitations whatever except with reference to what the traffic would bear. Their rates have never been examined or investigated by the commission as to their reasonableness or unreasonableness. It appears to have been considered entirely proper that the public should pay these companies considerably more for a given passenger service than is paid for the same service to the Baltimore & Ohio, the Erie, and certain other trunk lines. Now, it is undeniably true, a fact admitted by the railway managers at the rate-advance hearings in 1910, that a hard and fast agreement exists between all the trunk lines, and that they maintain a central association, or bureau, in New York City. Their combination would, however, be powerless to maintain unreasonable rates without the recognition given by the commission to the "constant-profit" theory. But with that recognition and adherence to their established practices, the associated trunk lines are able to exactly reverse the natural order and substitute self-interest for the interest and welfare of the public. If the economic law of competition were allowed to operate in trunk line territory the lowest rate between the East and West would be those over the most natural and direct and the best equipped routes—that is to say, over

the New York Central and Pennsylvania. They have eliminated all difficult grades and curves, duplicated trackage, acquired terminal facilities, and provided themselves with superior motive power and rolling stock until they can move a given tonnage over a long distance at less than one-half what the same would cost over other and inferior roads.

By acting secretly in concert and by constant readjustment and classifications of rates, thus working them up from one level to another, they have escaped entirely the regulative powers of the commission and become a law unto themselves. The commission could not now, under existing law, even if so inclined, examine and pass upon the rate question in its application to the whole trunk-line situation and establish in trunk-line territory a system of rates. Indeed, Congress has heretofore, unwisely, I think, withheld from the commission any such power. Without it it is idle to talk about any general rule for ascertaining the reasonable rate, and the rule of a constant profit for the carriers, in addition to being destructive of all other interests, is a pure invention to serve the selfish purposes of the railroads. (Cong. Rec., Vol. 49, Pt. 1, p. 59.)

* * * * *

We are disadvantaged by our environment in the very midst of events constantly transpiring all round us in the world of railroad construction, finance, and operation. Transportation of persons and property are interwoven with our everyday affairs and our very existence, so that we have failed to see the trend and drift of the matter, or to discern the final solution of the problems presented to us. The figures representing the present financial status of the railroads mystify us by their magnitudes. We can only understand their significance by comparisons.

The present capitalization upon which we are paying interest and dividends by way of rates and fares is, according to the latest report of the Interstate Commerce Commission, eighteen billions of dollars.

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In so far as this vast sum represents actual investment, it is for the most part investment made by the people who use—and who have no choice in the matter—the facilities provided, comparatively few of whom own any of the stocks or bonds. Yet the holders of these are constantly referred to as investors whose investments must be safeguarded against any diminution of returns which have gone on increasing proportionately as their property has been added to by accretions from collections which their patrons had no option but to pay. (Cong. Rec., Vol. 49, Pt. 1, p. 59.)

* * * *

The provision of the committee bill injecting the subject of stock and bond issues into the scheme of valuation is one which, in my judgment, is fraught with mischief. It imposes upon the commission a useless if not in fact an impossible task. But the strongest argument against it is that it carries with it an assumption that the Government is under some sort of obligation to the carriers with respect to their internal finances and private relations to the holders of stocks and bonds. An inquiry, such as is provided for in the bill, as to the minute history of every issue of railroad stocks and bonds is one from which a commission composed of many members and provided with unlimited revenues might well wish to be excused. It appears to me as impossible as it is useless; and if the expenditures by the commission during recent fiscal years when it was engaged in only its routine duties may be accepted as an indication of the cost of the work directed by the bill to be done, we would do well to give that phase of the subject our most serious consideration. The estimate of cost given by the commissioners are mere guesses and not very shrewd guesses at that. It will take several years to obtain the data, and at the end of that time it will be fit only for the junk heap. So many changes will have occurred that the data would afford no satisfactory light on any question properly before the commission, even if it could ever be placed in manage-

able form. None of the commissioners nor any member of the committee was able at the hearings or is able now to suggest any definite use for the outcome of all this labor and expense. I do not deny the power of Congress to obtain all the information specified in the bill and to spend all the money necessary to obtain it. But I look upon the theory of rate making underlying it as peculiarly and stupendously vicious. (Cong. Rec., Vol., 49, Pt. 1, p. 60.)

* * * * *

The railroad managers and representatives earnestly and even persistently cultivate in the people those hopes and fears which make for corporate enrichment and popular loss. To them and their activities more than to aught else is due that morbid appetite for commercial conquest which has led to a wasteful exploitation of our diminishing natural resources. If a few square miles are found remote from railroad lines, the residents of that area are soon convinced of their complete isolation from the balance of the world and made to believe that the only thing needed to insure them plenteous prosperity and content is the advent of a railroad. And urban populations are in divers ways and through various channels and instrumentalities of false construction convinced that any legislative interference with railroad extension is a dire menace to progress, and that the financial conditions of the railroads, reflected in earnings and dividends, is the true barometer of general business, and that a showing therein of a large balance in favor of the railroads constitutes the mainspring of universal as well as individual prosperity. Much that is promulgated on this subject begs the question and ignores not only the presence in the statute books of the interstate commerce act but also the public duties of the carriers.

With a view to promoting general prosperity the carriers would compel large contributions from the purses of rate payers to those who in the opinion of the

railroad economists are best qualified to bring about and maintain it by the circulation of money that such extensions would require. The railroad corporations dominate all other business, in addition to having absolute dominion over their own, and often rob particular sections of the country of the advantages which would naturally belong to them by reason of water transportation or otherwise, and the brazen claim is now made that their demand for high rates should be sustained in order that the shortest through route to general prosperity is by way of increased employment for labor by them, to be paid from large surpluses, only possible if high rates be charged and collected. (Cong. Rec., Vol. 49, Pt. 1, p. 61.)

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Much has been said about a claim of great and prosperous lines to enjoy, in form of greater profits, the rewards of superior engineering foresight and managerial ability. It is said that such a great institution should be conceded an organization value in the establishment of rates. Those who make that claim will regard as presumptuous any attempt to answer this plausible claim, appealing as it does to our natural inclination to applaud those who have achieved success in any pursuit or line of activity. But that the claim is superficial and utterly destitute of merit is not so difficult to demonstrate as it seems to be upon first impression. In the first place it entirely ignores the distinction between private and public service. It must be borne in mind that recognition for this claim is presented at the bar of the legislative body of the Nation and consideration is asked for it as a feature of the pending bill. It is therefore to be treated as a claim preferred for recognition at the hands of the general public, and as such I will examine and discuss it.

In the first place, it entirely ignores the distinction between private and public service. Men devote superior talent and industry to the public on the same terms and subject to the same sovereign powers as they devote talent and industry of mediocre and

inferior quality, or as one devotes more and another less of capital. In the second place it is impossible to find any deserving recipient of any reward that it might, upon this new theory be proper to bestow. No man living, nor the descendants of any that have died, are entitled to compensation in any form for projecting, for instance, the New York Central as it was projected. In addition to the fact that the original promoters and builders quickly pocketed great fortunes by manipulating the stocks and bonds, and not by superior public service, is the fact that they enjoyed the favor and aid of State and municipal authorities without which their enterprise and foresight would have availed them nothing. In the third place, speaking now with reference to the present active managers, there is no basis for any claim of superior management. But assuming that the management is excellent, it is a safe assumption that all in a supervisory capacity are in the enjoyment of adequate salaries. Then we have the corporation itself, the nonsentiment figment of the imagination which need not be considered aside from its stockholders. And as to the latter, the question of why their dividends should be rendered constant and secure by action taken by the Government has not been answered and will remain unanswered. Finally, as for the claim of the New York Central and other such companies based on superior management, it does not appear that a well constructed, highly improved, and thoroughly equipped railroad is any more difficult to manage, or even as difficult, as one of a different kind. Of all mechanical appliances that used in the transportation of persons and property from place to place is the simplest, involving a comparatively low degree of mechanical skill.

Of course, a railroad system is complicated in its entirety, as would be a great department store, but the task assigned to each man is simple. Again, transportation considered apart from its instrumentalities is too important a function to come under the absolute unsupervised control of any person or persons, either in an individual or privately

organized capacity. It is to modern life what chemical forces, gravitation, and motion are to the earth. It is the one thing that makes production worth while and exchange possible, as the recurrence of the seasons causes vegetation to grow and the fruits of the fields to multiply. Therefore, these great conquests of the wilderness, these great advances of civilization, for which so much credit is claimed for individuals and corporations, were the mere applications of forces which belong to the whole people. Those in control temporarily of these powerful instrumentalities are the mere accidents of a day. Their achievements were not attributable so much to their superior business sagacity as to popular tolerance, credulity, and optimism.

The railroads are now claiming that rates should be maintained or increased so as to produce surpluses beyond a fair return on existing capitalizations in order to sustain the credit of the railroads. In other words, they expect Congress, the President, the Interstate Commerce Commission, and everybody having anything to do with regulation to depart from all fundamental principles governing railroad rates and set up a new rule, a rule which, while leaving the control of stock and bond issues, as well as the financial and operating control, exclusively in private hands, would impose the duty first upon Congress and then upon the commission, and ultimately upon the people to insure a market price for stocks and bonds such as will facilitate the borrowing of money and steady the market for stocks and bonds. To all familiar with the subject, to all who have in mind the public interest, the proposition is absurd and preposterous on its face. It would impose a task which, even if supportable on any just principle, would be impossible to perform, even though all the constitutional powers of the Government were fully exerted. (Cong. Rec., Vol. 49, Pt. 1, pp. 62, 63.)

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The present law amounts to just this: The carriers shall deal fairly by the public, and when a question

of fairness or unfairness is raised the commission shall sit as an arbitration board with full powers in the premises. The reports in the rate-increase cases fully support this view. I understand from these reports that the value of property devoted to the public use, even if any satisfactory proof of it had been made, would have constituted only one of many important elements in the case. And I infer from the language of both Lane and Prouty, commissioners, that if the railroads had made strong showings as to revenue requirements many of the proposed increases would have been allowed. Be that as it may, it is a fact, one which should arouse serious concern, that the railroads are now engaged in the preparation of a valuation of their properties to be used in making up a case upon which the commission can not reasonably prevent further increases in their rates. So the issue before the commission between the carriers and the public has been within two years converted from one raised by shippers demanding a reduction of rates to one now raised by the railroads for an increase. Though widespread protest, amounting almost to a popular uprising, stands in the way of a wholesale increase, practically the same end may now be reached gradually, covertly, and in detail, and without attracting public attention. (Cong. Rec., Vol. 49, Pt. 1, p. 65.)

REPRESENTATIVE CAMPBELL (Kansas), on December 3, 1912, concerning the Committee Report, said (Cong. Rec. Vol. 49, Pt. 1, p. 66):

Two results should follow the ascertainment of the valuation of railroads: First of all, a regulation of the issuance of their stocks and bonds. The gentleman from Illinois (Mr. Mann) closed as I would begin, if I had the time, with a discussion of one of the most vital subjects connected with this matter—the issuance of stocks and bonds of common carriers. Every investor ought to know, by the valuation of the property, what his stock is worth. He ought to know the amount of stock that has been issued, the

amount of bonds that have been issued, and by that be able to place some value upon the property that he has purchased. Then let the manipulators manipulate. Then let the stock gamblers gamble. If the investor who owns the stock does not see fit to throw his property upon the market for sale, it will still represent a value based upon the actual value of the road.

The time is coming when investors will be found in every part of the country who will purchase stocks of the transportation companies of the country, and that sort of investment should be encouraged.

The stock of transportation companies ought to be made a safe investment for every person who has the money to invest.

It ought not to be a speculation or perhaps, more properly, gambling. The matter ought not to be left to the manipulators who sometimes gamble in the price of the stocks of railroad companies. This has been done and no doubt will continue to be done until either the State where the gambling places are operated or the Nation that controls interstate commerce shall find a way to put a stop to that species of stock manipulation and gambling. The day is past when promoters should have the right to fix the amount of either the capital stock or the bonded indebtedness of railroads without limit or check upon them.

The bill therefore ought to be completed by providing for a control of the issuance of stocks and bonds of these companies, based upon the valuation as found by the commission.

REPRESENTATIVE CULLOP (Indiana), December 3, 1912, following the reading of the Committee Report, said (Cong. Rec., Vol. 49, Pt. 1, p. 48):

Mr. Chairman, the purpose of this measure is to ascertain the physical valuation of the railroads for the purpose of preventing impositions on the public in the sale of capital stock, bonds, and the fixing of transportation charges.

There can be no question that there is a demand for such legislation, and the object of this bill is to satisfy that demand.

Railroad rates are to-day fixed in a manner which is absolutely unjust to the ultimate consumers and the shippers of the country. Transportation rates are fixed on three items of consideration as the basis, first, to pay operating expenses and improvement charges; second, to pay interest on the bonded indebtedness; and, third, to pay a reasonable dividend upon the capital stock. The first basis is just. The second is absolutely wrong, and if the second and third are both employed, as is now done, they constitute a double charge upon the shipping public which must be paid by the ultimate consumers of the country and thereby constitutes a burden on them. It is not fair to charge a rate that will make a sufficient earning to pay the interest on the bonded indebtedness and a dividend on the capital stock. Either the money raised by the bonded indebtedness went into the pockets of the owners of the railroad as a net profit or it was invested in the construction and equipment of the road. If, therefore, a rate is charged which will create earnings to pay the interest on the bonded indebtedness and also a dividend on the capital stock—which more than covers every dollar of bonded indebtedness—such a basis necessarily constitutes a double charge. For that reason the present basis of fixing railroad rates in this country is absolutely erroneous and gives the owners an unjust advantage over other business enterprises.

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Again, it is a well-known fact that there is an over-capitalization of nearly every railroad in the country. The capital stock, as a usual thing, is more than double the actual cost of the building and equipping of the railroad. In many instances not only is the capital stock double the amount of the bonded indebtedness but sometimes three or four times the value of the road, and in many instances the bonded indebtedness, the mortgage indebtedness,

of the railroad is greater than the actual cost of the building and equipping of the road itself. So that, therefore, to charge a freight rate and fix it on the basis now employed enough to pay the interest on the bonded indebtedness and a dividend on the capital stock is an outrage against the ultimate consumers of the country. It is this manner of fixing rates as now employed in this country, this manner of fixing transportation charges by the great common carriers of the country, which retards the development of the country and prevents the full realization on investments in other industrial enterprises.

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There is another thing about this bill that ought to be considered, and that is that it will to a large degree, if not altogether, stop the overcapitalization of railroads and the overbonding of them. It will stop the imposition which to-day and for years has been practiced, the abuse of selling watered stocks and inflated bonds to innocent purchasers. I am aware of one argument that will be made against it, and that is that these stocks have passed into the hands of widows and orphans of the country and superannuated preachers. I take it that that argument is not sufficient in the mind of any gentleman upon this floor to oppose the passage of such a measure as this. If such people have been unfortunate in their investments, they must stand upon the same basis with other people who have been likewise unfortunate. But it is not fair to 90,000,000 of people that they should be required to pay unjust and enormous transportation tolls and have the development of our country restricted in order that the investments of a few may be made safe and good. Better it would be that Congress would appropriate the money to make restitution to them than to impose upon 90,000,000 of people, as is being done now in the fixing of transportation rates in this country, and retarding the commerce of a great

country. It would be cheaper to the people in the end.

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It is the object of this bill, according to my understanding, that the capital stock and bonded indebtedness should have nothing whatever to do with the fixing of the railroad rates in this country. It should be the policy of the Government that private business is never to be guaranteed; and if the owners of railroads make bad investments in their business methods, make extravagant purchases, and the construction of the roads is imprudently done, then the innocent public should never, as a matter of common justice, be taxed to make up for the errors of any man's business judgment. It is not right as a public policy, and it is not the intention, I will say to the gentleman, to let the bonded indebtedness or the overcapitalization, the creation of great financiers, those engaged in high finance, be the subjects for the plunder of the innocent people of the country or to retard the development of the greatest country on earth, as is now being done. In every line of business men suffer for their own mistakes in judgment and not the public. (Cong. Rec. Vol. 49 Pt. 1, p. 49.)

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Mr. Chairman, the term "confiscation" has been used as a scarecrow in this country for more than a quarter of a century. It has been made do overtime. Why should the Government guarantee anybody's private investment? It has no more right to do that than to guarantee the investment of a man in his farm, in a store, or in a factory.

Yet it is proposed by some that when a man undertakes to build a public utility, building it for making profit, for earning money on his investment, the Government ought to step in and permit him to fleece the public in order to make his business successful. Such a proposition is indefensible, and whenever presented it should be rebuked. Governments were instituted for the benefit of the governed

and not the governed for the benefit of the governments. Courts should uphold, if it can reasonably be done, the will of the people as expressed by their lawmaking powers, and the principle involved in this measure is not repugnant to the rule of our courts so far expressed on similar questions.

To-day, under the method in which railroad rates are levied, the basis employed, there is not a railroad in the country that can lose money if it employs intelligent business methods. If it does not earn profits, it is because of its bad business management. Against this no legislation could safely be enacted which would assure good business management. (Cong. Rec., Vol. 49, Pt. 1, p. 49.)

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Certainly he could. Now, let us look at the origin of the present system employed. Fifteen years ago there started in a movement for legislation to make just such a thing as we have now constructed the basis upon which rates should be levied. Railroad companies increased their capital stock three, four, and five hundred per cent without adding values. Why? Because it was to be taken as the basis for earning dividends for them on the amount of capitalization. It was a well-directed and well-conceived plan to get exorbitant rates—dividends on watered stocks, on fictitious values. There was a well-directed plan to get at the basis which is now employed, and with that purpose in view the railroad companies began to increase their capital stock without additional investment of any consequence until they increased it in many instances more than three hundredfold. What was the result? Then they began to bond, and many of the best railroads of the country to-day are bonded for more than enough to build and equip them. What was the object in all of this? The object was to increase earnings, and not to improve facilities. It is the only institution so far known which earns a profit on its indebtedness. Indebtedness is always loss, but here is an instance in which indebtedness is a great profit to the trans-

portation companies. Such has been the method all along the line in the regulation of this great business. (Cong. Rec., Vol. 49, Pt. 1, p. 49.)

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It is not fair to the public that it be taxed to earn dividends on watered stock; that freight rates be fixed at such price as to pay dividends upon watered stock that cost the railroads nothing. When such a procedure is permitted, nothing is turned into value and millions are made by such a policy which have never been earned. Such a policy is unjust and unfair. This bill will in a very large measure eliminate that system and will to a certain extent wipe out the system of high financing in this country by which the innocent public is exploited so often. That is one of the objects of it, and the country will approve it. (Cong. Rec., Vol. 49, Pt. 1, p. 50.)

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It is unfair to the public that the Government should guarantee the investment in stocks and bonds, and yet that is the effect of the present system. If the stock and bond speculator wants to go on the market and speculate, the Government ought not to guarantee his investments. Who ought the Government to protect? The producers and consumers, and not alone the speculator who thrives by the manipulation of the stock market. The speculator is taking his chances in the mad race of speculation. Should the Government throw its strong arm around him and protect his chance speculation at the expense of the innocent producer and the helpless ultimate consumer of the country, or should it protect the one who earns his living by the employment of his muscle and mind? That is the proposition involved here. For me, I want to stand by the producer; I want to help the helpless consumer of this country and not the stock speculator who takes his chances on the opportunities of trade of this country, because he is not so deserving as the other, whoever he may be. It would give a great impetus to every manufacturing industry, to

every mining industry, to every farmer in this country, and it would multiply the productions of the farm, factory, and mine, and the cheaper products which now go to waste could be put into the markets of the world where there is a demand by the ultimate consumer, and it would thereby help all. (Cong. Rec., Vol. 49, Pt. 1, p. 50.)

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I may state to the gentleman from Illinois that the theory of this bill is that the physical valuation of the properties shall be determined irrespective of their capitalization and their bonded indebtedness, and the rates fixed upon that, so that there will be no inducements to the overzealous speculator of the country to rush in and buy watered stock or inflated bonds. (Cong. Rec., Vol. 49, Pt. 1, p. 50.)

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There is another proposition which I want to call to the attention of the committee. These companies give one valuation for purposes of taxation, to raise public revenues, and then an altogether different valuation of the property to the Interstate Commerce Commission for the basis of charging the public for service to earn revenues from the public, which all, I take it, will concede to be unfair to the public. If the roads fix one value for taxation, why should they not be bound by the same valuation for the fixing of service charges. If it is fair that they should be taxed upon a certain valuation, then it is also fair that the public should be taxed on the same valuation for the transportation services performed. I do not believe any man will deny that proposition.

The question involved in this legislation is of vast importance to the public and upon the result depends much the conditions which shall follow, whether it shall retard or accelerate the development of our country and inspire the prosperity of the people. Common carriers render public service and should be regulated to the end that the country should be benefited thereby.

We are living in an age of wonderful progress and evolution of the times produces marvelous strides in the development of every human activity. More is being done daily and more is required to be done to aid every agency human ingenuity can employ to facilitate the progress of the times so essential to secure the contentment and happiness of the people and to inspire and accelerate the prosperity of our country. Legislation to this end is demanded in order that the requirements of public weal may be assisted and public wants supplied for the promotion of the common welfare and the general benefit of the entire public. (Cong. Rec. Vol. 49, Pt. 1, p. 51.)

REPRESENTATIVE BORLAND (Missouri), on December 3, 1912, concerning the Committee Report, said (Cong. Rec., Vol. 49, Pt. 1, p. 52):

We have come to a time when the question of the physical valuation of railroad properties is an absolute pressing necessity. We have come to a time when the conditions are ripe for such a physical valuation. The speculative age of railroad building is probably at an end in this country. A generation or a generation and a half ago all the great West was eagerly bidding for railroads. Land grants, aid bonds, public subscription of stock, anything on earth was offered to get a railroad out there in a country that could not produce the business that justified a railroad when it was first built. Now all of those railroads have been built. They were cheaply built; many of them built entirely out of land grants or aid bonds, and yet stocks and bonds were put upon the market based upon such properties. In 1893 came a period which was a clearing house of all these western railroads. Almost without exception they went through a period of receivership and all scaled down their indebtedness and all wiped out public stocks and bonds and all control the public had over the management, and they all consolidated great systems. Then they began to rebuild out of the

earnings and capitalization of that property an entirely new and adequate system of transportation throughout the West. But now the period of railroad speculation is almost at an end and a period of railroad operation has come when the roads are putting in heavier rails, straighter roadbeds, broader ties, better bridges, double tracking in most cases, running bigger trains, heavier engines, and fewer men to the train crew.

APPENDIX B

(*Ante*, p. 21)

STATEMENT OF SENATOR LA FOLLETTE, ON THE FLOOR OF THE SENATE, ACT OF MARCH 1, 1913

SENATOR LA FOLLETTE (Wisconsin), on February 24, 1913, requested that the Senate, as a Committee of the Whole, ask consideration of House Bill 22593. (Cong. Rec., Vol. 49, Pt. 4, pp. 3793, 3794.) Concerning the bill Senator La Follette stated (Cong. Rec., Vol. 49, Pt. 4, pp. 3796, 3797):

(1) THE ORIGINAL COST TO DATE

Existing railroads have actually been built up through a series of years. The construction has been piecemeal and has advanced with the growth of the business. The original cost to date will, at every stage of construction, take account of the prices paid at the time for property, material, and labor, the amount of money paid out for legal services, engineers, architects, designers, management in organizing the corporation and constructing the road.

I digress just a moment to say, Mr. President, that in ascertaining the value of one of the public utilities of Wisconsin our commission carried its work over a period of 40 years. It found one case where there was manifestly a job perpetrated upon the public where one contractor was allowed \$3 a day for labor employed, when the going price of labor ascertained by the commission as prevailing at that time was \$1.50 per day. They did not allow the \$3, which was an imposition upon the public, but permitted only the actual value of the labor at that time to be charged up as a part of the capitalization of the road. That is what the tracing out of the original cost to date will mean on every one of these properties.

I can understand how the question will at once be raised in the minds of Senators as to the difficulty, particularly with respect to many of these older roads, of ascertaining these facts; and you will find the opinion expressed by theorists upon the subject that to do so is impossible. But we have had in Wisconsin—they have had in the State of Washington and in other States—an experience that contradicts these theories. It is possible to ascertain this original cost.

In case of the gas plant in the city of Milwaukee, although the books did not furnish the figures, the cost of all the materials entering into the construction of that plant was determined as of the time. It simply requires industry and thoroughness on the part of the commission charged with the responsibility. And in no other way can the public ever be informed of the exact amount actually invested by the carrier, excepting by establishing the original cost to date.

The original cost to date will also show the exact amount received from the sale of stocks and bonds, and, if the bonds have been sold at a discount, the price realized and all the expenses of brokerage. It will show the amount paid in by stockholders. If stocks or bonds have been issued for property instead of cash, the value of the acquired property will be ascertained. If the present corporation has acquired the property or any portion thereof at less than its physical value, or through some form of manipulation or combination or deception to the public, with a view of strengthening its monopoly character and increasing its prospect for excessive value, or if its expenditures do not represent reasonable expenditures which ordinary business management would not have approved, all of these facts will be disclosed by ascertaining the original cost to date, and the matter will be dealt with by the court when it comes to pass upon that question. The Supreme Court has already in one notable case, the Stanislaus case, rejected excessive costs and manifestly extravagant expenditures made by the

corporation, and denied their right to capitalize those extravagant and corrupt expenditures against the public. It will be for the commission and the courts to determine to what extent, if at all, such investments will be allowed to be capitalized as against the public for rate-making purposes. In short, the original cost to date will show the true investment.

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(2) COST OF REPRODUCTION NEW

This will show the exact cost of reconstructing the property in all its parts at existing prices.

There is a contention to-day by the owners of public utilities and by those representing all common carriers that "cost of reproduction new" is the true basis for the fixing of rates. I myself do not agree with that view. While this cost was once accepted—and the Supreme Court is still frequently quoted as in favor of cost of reproduction new as an element which must be considered in the fixing of rates—with every decision that comes from State courts or from the Supreme Court of the United States it becomes more and more a diminishing element in ascertaining the fair value which is to be used for rate-making purposes. But since there is still a contention that it is an element to be considered, and since there is recognition of it in the decisions of the Supreme Court, not yet eliminated, it is included in this bill. (Cong. Rec., Vol. 49, Pt. 4, p. 3797.)

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"Present value" is not a safe term to use without extended definition and qualification. The danger of employing it without limiting its application lies in its current use by engineers to mean the earning power of a public utility. And the earning power of a public utility is based upon existing rates. Values based upon existing rates aim to justify existing rates. Hence the very purpose of determining the present value would preclude any reduction in rates and lead to reasoning in a circle. The bill provides for

separate ascertainment of original cost to date, the cost of reproduction new, and the cost of reproduction less depreciation. We simply get all these elements of value and label each one of them. (Cong. Rec., Vol. 49, Pt. 4, p. 3797.)

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As stated, Mr. President, the cost of reproduction new will show the exact cost of reconstructing the property in all its parts at existing prices. While this may be regarded as a classification of diminishing value, it is contended that it is entitled to consideration in ascertaining the value of the physical properties of the carrier, and that contention is recognized by some commissions and some courts. It is therefore included as a separate classification in the bill.

(3) THE COST OF REPRODUCTION LESS DEPRECIATION

This will show the exact cost of reproduction in existing condition. This cost is arrived at by taking the amount of depreciation which has occurred in every part of the property since it was laid down or employed in the public service. This is an element of value so generally considered essential by commissions and courts that the wisdom of establishing it will not be questioned. That is, the commission will determine the cost of the railroad as it is to-day. Certain portions of the property are new and have just been put in; others are well worn. All those elements will be carefully scanned and their value taken account of, so that when this item of value is returned we will know what that property is worth as it stands to-day. (Cong. Rec., Vol. 49, Pt. 4, p. 3797.)

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(4) OTHER VALUES AND OTHER ELEMENTS OF VALUE—THAT IS, INTANGIBLE VALUES

There is contention as to what intangible or whether, in fact, any intangible values should be included by a commission or rate-making body in assembling the values to be made the basis of the fair value upon which rates shall be fixed. The claim is

made in behalf of public utilities that going value, good will, and franchise value should all be ascertained and capitalized. Going value is the cost of developing the business organization of a common carrier after the physical property has been completed. After you have constructed the road, put on the rolling stock, and are ready to begin operating, an expenditure of money is required in establishing the business before the common carrier begins to pay reasonably fair returns on the capital invested. The amount so expended measures the going value. If there is an intangible value that can be rightfully incorporated in the values to be considered in the making of fair rates, it is this one of going value. It is ascertainable. Where they have kept their books honestly and fairly the books will show the exact expenditures.

When you come to the next intangible value, good will, my own opinion is that it is an intangible element which should not be included or considered by the commission in determining the fair value of a common carrier as a basis for rate making. Good will is an expenditure made to take business away from a competitor. Good will implies the existence of competitors furnishing the same product and selling it in the same market. The customers of a common carrier have no freedom of choice, because the common carrier is a natural monopoly and the public has no option of dealing with it in case they are dissatisfied. They are bound to use the common carrier even though it earns their ill will instead of their good will. (Cong. Rec., Vol. 49, pt. 4, p. 3798.)

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In ascertaining the cost of reproduction new there is no actual construction. It is a theoretical value determined from the estimate of engineers, based on reproducing the property at present prices of labor and material. That is all it is. It does not take into account anything else. Of course, in getting the value of the actual construction of a road the interest on any capital lying idle under reasonably

good business management would have to be taken into account as a proper expenditure, but this element of value does not appear in getting the "cost of reproduction new." It is an item of value which would be taken account of in determining the "original cost to date." (Cong. Rec., Vol. 49, Pt. 4, p. 3798.)

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I will say to my friend from Kansas that every item of expenditure will appear in "original cost to date," and I think it is proper that it should, because it is right for the public to know just how much money has been invested in the property of the common carrier; and it is further right that it should be known just how much of that has been invested by the common carrier itself and how much by the public. The "original cost to date," together with the financial history of all the transactions of the common carrier provided for later in the bill, will give to the public that information.

But to conclude as to these intangible values. The elements of value which will finally constitute fair value for rate-making purposes are steadily narrowing. They are not expanding. No decision by commission or court will stand which is ultimately found to be unfair to the public or to the common carrier.

The third subdivision of section 19-a requires the commission to ascertain and report separately the property held by railroads for purposes other than those of a common carrier. This subdivision and likewise the fifth, which relates to grants and donations and aids and all that, will furnish information that in some aspects will be useful to the commission and to which from every point of view the public is rightfully entitled.

Now I come to the paragraph to which the Senator from Alabama directed my attention.

The fourth subdivision of section 19-a relates to the financial history of the common carrier, and covers

all transactions material to the ultimate purpose for which this bill is enacted.

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The terms of this fourth subdivision are plain and do not require to be defined. When the commission has complied with its requirements and reported to Congress, we shall be advised of all the financial operations of every common carrier. Whenever there has been a juggling of the stock and bond operations of a common carrier, with a rake-off to insiders, all of the facts will be laid bare. An important element of this provision is that requiring the commission to report upon the expenditures of all moneys received by the carrier and the purposes for which the same were expended.

The president of the Pennsylvania Co. testified in the *Advance Rate cases*, decided in 1911, that since 1887, when the Interstate commerce act went into effect, his company had expended on the Pennsylvania Railroad lines east of Pittsburgh \$262,000,000 from earnings. During all of this time this company has collected in rates from the public enough to maintain its property, meet operating expenses, pay handsome dividends on all its stock, and besides has exacted enough more from the public to accumulate an enormous surplus. Out of that surplus the Pennsylvania Co. has expended a sum equal to nearly two-thirds of the total cost of the construction of the 2,123 miles owned by the company. That surplus, I believe, is wrongfully taken from the public, and I believe that ultimately common carriers will not be allowed to capitalize it against the public.

In discussion of the subject on another occasion before the Senate I presented a table showing that 31 railroads had within a period of five years paid for permanent construction out of surplus profits exacted from the public amounting to more than \$350,000,000. Thus out of surplus they make extensive improvements and investments for which they should contribute new capital. Then they capitalize these investments and improvements, wrongfully accumu-

lated out of the profits on excessive rates, and in turn make this the basis for charging still higher rates. It is high time that this whole subject should be carefully investigated. The public has a right to know exactly how much has been invested in railroad property, and it likewise has a right to know how much of this investment was contributed by the owners of the roads and how much by the public.

The railroad corporations engaged in interstate commerce have not been and are not now regulated as to reasonable rates, for you can not ascertain what a reasonable rate is until you know the value of the property employed in the business; and after 26 years we are now about to ascertain the value of that property and establish a standard for fixing reasonable rates, if we pass this bill. But during all the time that has intervened for 26 years the carriers have gone on exacting from the public what they chose, taking enough to pay operating expenses and to meet maintenance. That was proper. In addition they have taken enough to pay interest and dividends—and that was right, provided they were not paying interest and dividends on fictitious capitalization.

And then, besides that, they have taken from the public hundreds upon hundreds of millions and put it into surplus, using that surplus to construct new lines, to build great and expensive and palatial terminals all over this country. Then they have capitalized those new lines and those terminals, assessing the public for the money which the public has put into the business.

Mr. President, I do not believe that is going to be permitted in the end. We are just approaching this big question. This bill does not attempt to settle the issue involved in the capitalization of surplus expended in permanent improvements and in construction.

The amendments in the succeeding paragraphs of the bill relate to procedure and are designed to make the original purpose of those paragraphs more definite

and certain of administration. Under the terms of the House bill whenever the commission completes the valuation of the property of any common carrier it is required to give notice and grant a hearing thereon to such carrier, with a view of making any necessary corrections before such valuation becomes final. The Senate committee amendment designates such completed valuation as "tentative" for the time being, and provides that notice shall be given not only to the common carrier but also to the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the commission may prescribe.

That will give the commission an opportunity to send notice of valuation to boards of trade and shippers' associations in the territory covered by the valuation, so everyone who is interested can appear and be heard. The Attorney General would represent in a broad way all the public, and any governor can direct the attorney general of any State through which the lines run to protest against or be heard in favor of the valuation.

If no protest is filed, the valuation becomes final—that is, final to the extent that it is *prima facie* evidence whenever a rate case arises. Upon protest being made, the commission, after hearing all the testimony, may correct the tentative value if found to be erroneous in the light of all the evidence presented. Then that becomes the final value and *prima facie* evidence of the fair value of the property of the common carrier in issue.

After the final value shall have been thus established, in any proceeding to fix rates under the interstate commerce act this final value may be assailed before the commission by the carrier or by any interested party for the public or any association of shippers.

In the event that an appeal is taken from the order of the commission fixing rates and such appeal involves the final value of the property of the carrier

as fixed by the commission and upon the trial evidence shall be introduced regarding such value, which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, shall transmit a copy of such evidence to the commission and shall stay further proceedings in said action for such time as the court shall determine from the date of such transmission. Upon the receipt of such evidence the commission shall consider the same and may fix a final value different from the one fixed in the first instance, and may alter, amend, or rescind any order which it has made involving said final value, and shall report its action thereon to said court within the time fixed by the court. If the commission shall alter, modify, or amend its order, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order. (Cong. Rec. Vol. 49, Pt. 4, p. 3799.)

* * * * *

The order referred to is the order which the commission entered in the proceedings to fix rates. It is assumed that the rates would be related to the value of the property of the carrier. If the carrier or any party interested for the public on the hearing of the appeal before the court offers new and material evidence as to the value of the property, evidence which might, for example, cause the rates fixed by the commission to be held by the court to make the rates fixed in the order of the commission confiscatory, or, on the other hand, so high as to be unjust to the public, the commission should have the opportunity to consider this new evidence as to the value of the property and modify its order if, in the judgment of the commission it ought to be modified. And this

provision of the bill is for the purpose of preventing the delay incident to having the case tried out—even to the court of last resort, it might be—on evidence as to the value of the property different from that heard by the commission when it passed upon the proceedings in the first instance.

Mr. President, out of 32 cases tried by the commission which were appealed to the Supreme Court up to 1906—when I went over the records very carefully at the time the Hepburn bill was pending here—26 of the 32 cases were reversed, because the railway companies withheld important testimony upon the hearing before the commission, offering it instead when the case was heard on appeal before the court. (Cong. Rec. Vol. 49, Pt. 4, pp. 3799, 3800.)

* * * * *

The Senator will notice in line 20 they are required to report in detail, and they are also required to analyze their costs. I will say to him that wherever there has been an ascertainment of the original cost to date, in so far as I know anything about it, they have gone into every item, and their cost sheets show everything of that sort. The trouble with attempting to enumerate what they shall do, to fix a limitation, is that if you say that they shall make statements about improvements under that they probably would not be required to go into detail about anything else except improvements. There are many items of the original cost that would not be covered by improvements, and I think there would be a danger in making any attempt to list and specify there unless you are certain that you were covering every single item of expenditure.

Mr. BRISTOW. There is one point I wanted to bring out in regard to that feature of the bill that requires the commission to ascertain the cost of production new. Such a finding, in my opinion, is not of any great value, so far as the rate making is concerned. It is a vacillating quantity; it does not represent in any sense the investment of the company in the con-

struction of the road. To illustrate: In a suit that was pending the estimated cost of the reproduction of the Northern Pacific Railroad was involved. I am informed the same engineer reported in 1907 and in 1909 as to the cost of reproduction new, and the value fixed in 1909 was \$185,000,000 more than the same engineer fixed the value of reproduction new in 1907.

Mr. LA FOLLETTE. That is a difference of 25 per cent.

Mr. BRISTOW. It is a difference of 25 per cent in two years as to the cost of reproducing new the railroad. That did not have anything to do with the investment which had been made in this property, and it seems to me that it is not a very material element of value to be considered in rate making.

There was another item that was taken into consideration at the same time by this engineer.

Mr. LA FOLLETTE. If the Senator will permit me, there was evidently just the employment of the engineer's imagination in that case, and the Interstate Commerce Commission was utterly helpless and powerless, and so they appealed to Congress, as they have done for the last 9 or 10 years, to give them authority to ascertain the value of the properties of the railroad company, in order that they might meet just such testimony as that. But let me say to the Senator on that question, that the Supreme Court of the United States has listed that as one of the values to be considered, and it has not yet by any express declaration eliminated it as a value to be ignored. So it seemed to the committee that we ought to give it its place here. I will, however, say to the Senator that I am confident that the views of all the advanced commissions of the country that are doing this valuation work are that there should be a very inconsiderable weight given to reproduction new. (Cong. Rec., Vol. 49, Pt. 4, p. 3801.)

APPENDIX C

(*Ante*, p. 25.)

STATEMENT OF SENATOR CUMMINS, ON THE FLOOR OF THE SENATE, ON THE AMENDMENT FOLLOWING THE DECISION IN THE KANSAS CITY SOUTHERN CASE

SENATOR CUMMINS (Iowa), on February 21, 1922, speaking before the Senate on Senate bill 539, relating to the physical valuation of the property of the carriers, said (Cong. Rec., Vol. 62, Pt. 3, p. 2843):

When the commission began the work of valuation in 1913 and came to the question of the lands of the companies it was confronted immediately with a very uncertain task. I will not go over the debates which I have had repeated to me and which were repeated somewhat in the hearings which we had. It is sufficient to say that the commission yielded to a decision of the Supreme Court which practically held that railroad companies were entitled to have considered the present value of their real property no matter how they acquired it. Even if it were donated either by individuals or by the Government, still the railroad companies were entitled to revenues that would produce a return upon the present value of that property, no matter how acquired. So the commission finally decided that it would ascertain the value of the lands of the railway companies with reference to the values of adjacent lands or lots as the case might be; that is to say, if the adjacent property was a farm it would ascertain the value per acre of the farm at the time of valuation and then would take as the value of the right of way of the railroad company through that farm such proportion of the entire value as the area of the right of way bore to the area of the entire farm; so that if the adjacent land was worth \$100 an acre and the railway company's right

of way occupied 6 acres it attributed to that right of way a value of \$600, and with like reasoning respecting lots and parts of lots. Tested by the rule which the commission adopted, all of the railway companies of the country receive the benefit of what we generally know as the unearned increment. Personally, I do not believe that a public utility company is entitled to the unearned increment, but I find myself in opposition to the Supreme Court of the United States and I yield to the judgment of that high tribunal. The commission yielded also, as it was its duty to do, and gave to the railway companies everywhere the benefit accruing in the last 75 years from the advance in real property, including farms and town lots, an advance brought about by increasing population and increasing commerce.

It made a report to Congress in which it stated that it had adopted that view, and set forth that it was utterly impossible for it to comply with that part of paragraph 2 of the law which required it to state "separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value." I am only repeating the language of the commission, with which I heartily agree, when I say that it is beyond human power, it is almost an unthinkable thing to ask the Interstate Commerce Commission to report what it would cost to condemn the present right of way or purchase the present right of way of any railroad company in the United States. I simply ask Senators to think for a moment of a concrete illustration. Suppose that any Senator were asked to determine what it would cost to acquire, either by purchase or by condemnation, the right of way of the Pennsylvania Railroad Co. from New York to Chicago. The very moment that it is suggested it becomes apparent to anyone who is capable of thought that the commission could not in the very nature of things do it. There is but one such right of way, and the commission was asked to speculate and conjecture upon the amount that would be required either to condemn or

purchase the right of way, terminals, and other real property in the possession of the railroad company which could not possibly be condemned; it was already in the use of the railroad company. The commission says, and says very truly, and the Supreme Court repeated that observation afterwards, that it would be necessary to consider the situation as though the Pennsylvania Railroad were not there at all, and some one were entering upon the enterprise of acquiring such a right of way upon the assumption that there was no railroad there.

I do not believe that is necessary for me to enlarge upon that phase of the matter, because the railroad companies themselves recognized the utter impossibility of ascertaining what it would cost to acquire any right of way, for how many of the owners of adjacent property would contribute the right of way for nothing in order to secure the enhancement of values that would result from building the railway, how many would contribute a part of the right of way, and so on, no human being can say. The whole subject is one that is so clear and plain that I ought not to consume a moment upon it. It is one of the things that can not be done, and the commission so declared in its report to Congress, and asked Congress to eliminate that requirement.

How did the railroad companies treat it? The railroad companies looked at it from this point of view: They said, in substance, of course the commission can not with any certainty determine what it would cost to acquire a right of way already in possession of a railroad company and that had no duplicate in the country, but we suggest this: Ordinarily it would cost three, four, or five times as much to secure the right of way as it would cost to purchase the adjoining property, to purchase a like area, or to purchase a farm of which the right of way was a part; and so in the Minnesota Rate case, to which I shall call your attention presently, they asked the Minnesota commission to multiply the present value of the property by three or four or five, and in that way to ascertain

the excess over present value as representing the cost of condemnation of the present right of way. The Supreme Court of the United States, in passing upon that question, commented—and I shall presently read from that—upon the impossibility of doing anything of that sort.

If the position of the railroad companies had been sustained, or is sustained now, and they are able to multiply the present value of the property as ascertained by the adjacent values, it will increase the valuation of the railroads by five or six or seven billions of dollars; and that means, upon the rate of return to which I have referred, an increase in the annual burden of anywhere from \$240,000,000 to \$248,000,000.

The Interstate Commerce Commission refused to make that report, for the reason that I have indicated; and having finished the valuation of several railroads, including the Kansas City & Southern Railway, without making a report as to excess of cost of condemnation over present value, that railroad applied for a writ of mandamus against the commission, seeking to require it to do this impossible thing.

* * * * *

I pursue this history now. After the decision of the Supreme Court which I have just read, the commission, as any other law-abiding tribunal would do, went forward in an attempt to comply with the law and with the order of the court, and entered upon another hearing. It necessarily adopted the general philosophy of the railroad companies as to the excess of cost over present value; and that is a most repugnant phrase to be found in any statute, Mr. President. It bears no other construction than that we were attempting to give to the railroad companies a return upon something more than the present value of their property, a thing which is abhorrent to every sense of justice.

The commission then proceeded, and I know it will be interesting to observe the policy which the commission was then compelled to adopt. Mark you,

the railroad companies were all this time claiming that after the full value had been ascertained, the value with all the increases which development and growth had brought about, then the commission must multiply that value by three or four or more as a multiplier, and in that way fix the value of the lands.

The commission did not yield to the pressure brought to bear upon it by the railroads, and complied with the order of the Supreme Court in a mild degree. It divided the lands of the railroad companies into a great number of types. For instance, the first type noted on this paper furnished me by the valuation bureau of the commission is "highly developed lot property," and it has four subdivisions under that type—one commercial, one residential, one industrial, and one mixed utility when not included in above subdivisions. It reached the conclusion that where a whole lot had been taken by a railroad company of a commercial character it would add 60 per cent to the present value so ascertained. Where a part of a lot was taken under that designation it would add 75 per cent. (Cong. Rec., Vol. 62, Pt. 3, p. 2845.)

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I am not criticizing the Interstate Commerce Commission. It is doing the best it can under the circumstances. It has practically compromised with the railroad claim by adopting about one-third of the railroad demands; but even with the additions which are proposed in this exhibit, and which the Interstate Commerce Commission is now pursuing as well as it is able, and if no part of the further railroad claim is conceded anywhere, we will add more than \$2,000,000,000 to the value of the railway lands of the United States, and, as I remarked in the beginning—and that was the reason why I did so remark—that means an annual imposition upon the people in the way of railway rates of not less than \$120,000,000; and if under the testimony which is being taken all the while by the Interstate Commerce Commission the railway claim should hereafter be given further

consideration, it might add \$4,000,000,000 or more to the value of these lands.

My position is, that when the railway companies receive the benefit of the unearned increment of all the lands in the United States, of which they have been in possession in many instances for more than 50 years, when rights of way which were insignificant in their cost at the time of acquisition have quadrupled and multiplied in many instances a hundred times, I think they ought to be content, and should not insist that we should not only give them the benefit of the increased value of their property as a whole, but that we should attempt to ascertain what it would cost to acquire by condemnation or purchase their particular rights of-way at the present moment. That is the whole purpose of this amendment. It is to strike out the requirement that the commission shall find the excess of cost of present condemnation over present value. They are entitled to present value, and I think the commission ought to be permitted to go its way unhampered by a statute of this sort, to ascertain, according to the rules of the law, as they understand those rules, what the present value of the lands held by the railway companies is. (Cong. Rec., Vol. 62, Pt. 3, p. 2845).

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Mr. President, I do not intend to continue the discussion further at this time. The whole subject is so clear, the injustice of requiring the commission to do this thing is so manifest, and the utter want of any showing that injustice would be done to the railroads by eliminating this part of the statute is so conclusively established that I am at a loss to know what further I can say in supporting the amendment which I have proposed.

I do not want Congress to stand longer in the attitude of suggesting to the commission or suggesting to any court that this excess of cost is a fair and reasonable element in the value of railway property. I want to relieve the commission of an embarrassment which it creates, and permit the commission to go

forward and value the railway property, ascertain the present value of railway lands unhindered and unhampered by any expression on the part of Congress with regard to the elements which enter into that value. If I thought I could get it adopted I would be very glad to bring forward a rule which, in my judgment, the Interstate Commerce Commission should follow in ascertaining the value of lands, but I am not going to do it simply because I think the commission will reach conclusions, if it is allowed to proceed without this impossible demand, that will fairly meet the views of all the people in the country and will give us for a basis for rate making in the future a reasonable value, a value which being established will not oppress the people to whom the railroads must render their service. (Cong. Rec., Vol. 62, Pt. 3, p. 2846.)

APPENDIX D

(*Ante*, p. 28.)

STATEMENTS OF MEMBERS ON THE FLOOR OF THE HOUSE, ON THE AMENDMENT FOLLOWING THE DECISION IN THE KANSAS CITY SOUTHERN CASE

REPRESENTATIVE NEWTON (Minnesota), on June 2, 1922, speaking before the House as a Committee of the Whole House on the State of the Union, for the consideration of the bill to amend section 19-a, said (Cong. Rec., Vol. 62, Pt. 8, pp. 8055, 8057):

In 1920 Congress passed the transportation act, conferring upon the Interstate Commerce Commission the duty of establishing such rates that the carriers in a certain rate group would, under efficient management, and so forth, "earn an aggregate annual net railway operating income, equaling as nearly as may be to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation." The enactment of this legislation furnishes an added reason for obtaining the true worth and value of railroad property.

The first section of the valuation act requires the commission to define in detail as to the property used for carrier purposes the following:

- A. Original cost.
- B. Cost of reproduction new.
- C. Cost of reproduction less depreciation.

The present bill seeks to so word this paragraph as to make it not to apply to land. This is done by inserting after the word "property" the words "other than land."

The second paragraph requires the commission in its report to state in detail and separately from improvements the following:

A. Original cost of all land, etc., used for carrier purposes as of time of dedication to public use.

B. Present value thereof.

C. Separately, original and present cost of condemnation and damages or purchase in excess of such original cost or present value.

This bill seeks to amend this paragraph by doing away with the necessity of ascertaining anything but the original cost and present value of the land. This is done by inserting a period after "present value of the same" and striking out the remainder of the paragraph and its reference to "excess of cost of acquisition."

The passage of the valuation act was followed by the decision of the Supreme Court in the Minnesota Rate Case, which will be found in two hundred and thirteen United States, page 352. In this opinion the court condemned this principle of the excess of the cost of acquisition of real property as a basis of value for rate-making purposes. I quote from the decision of the court herewith:

"The company would certainly have no ground for complaint if it were allowed a value for these lands equal to the fair average market value of similar land in the vicinity, without addition by the use of multipliers or otherwise, to cover hypothetical outlays. The allowances made below for a conjectural cost of acquisition and consequential damages must be disapproved."

As a result of this decision the Interstate Commerce Commission never ascertained this excess cost of the acquisition of new land. The commission proceeded to ascertain the value of the various railroad lands without regard to this provision. They so valued the Kansas City Southern Railway system and served a tentative valuation without these figures upon that road. The railroad company brought mandamus proceedings against the commission to compel the commission to find and report this excess cost of acquiring land. The case finally reached the Supreme Court. It will be found in Two hundred

and fifty-second United States, page 178. In this case the court in nowise qualified its opinion in the Minnesota Rate case as to the unreliability and lack of worth of such information for rate purposes. But the court said that "Congress undisputably had the authority to impose upon the commission the duty in question"; and that the commission was not at liberty to disobey the express mandate of Congress, even if in its judgment the information was valueless or deficient or impossible to acquire.

The commission has been asking Congress to change the law ever since that time. The question before this House is whether we feel that this excess of cost over original cost of acquiring real property is a proper element upon which to find value for rate making or other purposes. It must be remembered that this amendment applies only to land valuation. There is no attempt to amend the law as to personal property or as to improvements upon the land. The cost of reproduction theory should not apply to land. You can not reproduce land; neither does land depreciate with use.

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The railroads, however, are not content with present value as a rate basis. They want the commission to take into consideration a certain fictitious value which is in excess of the present value. Let me illustrate: Here is a railroad right of way of 100 acres. The original cost of acquisition was \$10 per acre, or \$1,000 per tract. The original cost, therefore, would be \$1,000. To-day the market value of adjoining farm land is \$20 per acre. If there are 100 acres in the right of way, the present market value of the right of way is \$2,000. This is the method of valuation that the Supreme Court approved in the *Minnesota Rate case*. This is the valuation method that the commission used until the decision in the *Kansas City Southern case*. The railroad, however, is not content with this method of valuation. It wants to add to this what it would cost now to condemn 100 acres from this farming

country, now worth double its original value. This present value would not be there if there had not been a railroad. There could not have been a railroad without the railroads originally acquiring the land upon which the road was built, and the cost of acquisition of this land, of course, is already figured in the value not only as to the original cost but in the present value, for the present value is made up in part by the original cost of acquisition. Of course, there is no question but what to-day if the railroad wanted additional an acre it might possibly cost much more than \$20 per acre to acquire this particular tract. This would depend altogether upon the circumstances. There is no way of telling who would sell fairly or unfairly. One man might force the railroad to the expense of condemnation proceedings and another might not. It is all speculative and mere guesswork. To arrive at it you must assume that where there is a railroad there is none.

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To sum up: Congress has heretofore passed a law—the valuation act—which requires the commission to ascertain and report incompetent and irrelevant evidence as to the value of railroad land. This bill says that such evidence need not be further gathered and what has been gathered need not be considered by the commission or be presented in court by the commission in any valuation proceedings. Of course, if the carriers themselves desire to present such evidence in a court proceeding, and the court should desire to consider it, this bill would in nowise prevent it. The whole question is whether we are to aid the railroads of the country in compelling the Interstate Commerce Commission to allow this multiplied land value in the work that they are doing in valuing the railroads of the country. There should be but one answer. This Congress should not countenance in any way the gathering and consideration of this guesswork information under a doctrine which is unsound in every way and which if applied will mean multiplied and unjustifiable burdens upon our people.

Mr. Chairman, under leave granted to extend, I insert a table from the Bureau of Valuation of the Interstate Commerce Commission, showing the multiples used in arriving at this excess of cost of acquisition view of real property, which table has been in use since the decision in the Kansas City Southern case. I also insert another table from the commission, showing comparison between present value and excess of cost of acquisition as to 100 carriers. (Cong. Rec., Vol. 62, Pt. 8, p. 8057.)

REPRESENTATIVE GRAHAM (Illinois), on June 2, 1922, speaking before the House as a Committee of the Whole House on the state of the Union, for the consideration of the bill to amend section 19-a, said (Cong. Rec., Vol. 62, Pt. 8, p. 8063):

My time is almost ended, and I must, therefore, conclude my remarks. However, let me call your attention to the fact that with the last clause stricken from this second section of the law the law will still require a statement and report of "the present value of the same," referring to real estate. If it is claimed that by omitting this language in question, directing an ascertainment of the present condemnation cost, we are taking from the law an element of value which the railroads are entitled to and which they can establish in court. Permit me to suggest that the remaining language of the act gives them the right to the present value of their property, and this will be fixed by the rules of law and will include every possible element of value.

Recent experience has proved the lack of wisdom of writing into railroad legislation some particular provision or direction or indication of congressional opinion for the guidance of the Interstate Commerce Commission. I need only refer to the very unwise provision in the present transportation act, fixing an arbitrary standard of earnings at $5\frac{1}{2}$ or 6 per cent, a provision which has been slavishly followed by the Interstate Commerce Commission, which contends

this is a mandate of Congress. Let us in the future avoid such mandates so far as possible, if we do not want them followed by the Interstate Commerce Commission and railroads.

This law will take from the railroad valuations a very considerable sum to which, in my judgment, the railroads are not entitled, and which will have a tendency to reduce the valuation upon which freight and passenger rates are figured, and therefore ought to have a tendency to help reduce such rates and fares. This is something greatly required.

REPRESENTATIVE MERRITT (Connecticut), on June 2, 1922, speaking before the House as a Committee of the Whole House on the state of the Union, for the consideration of the bill to amend section 19-a, said (Cong. Rec., Vol 62, Pt. 8, p. 8059):

After the well-known *Minnesota Rate case* the valuation committee of the Interstate Commerce Commission so interpreted the decision as to make it unnecessary for them to obey the last clause in paragraph 2 of the valuation act, and they went ahead and made a number of tentative valuations without reporting separately, as required by the act, the original and present cost of condemnation and damages or purchase in excess of original cost or present value.

The *Minnesota Rate case* was decided in June, 1913. In March, 1920, the *Kansas City Southern case* was decided by the Supreme Court, and that decision set forth clearly that the interpretation of the Interstate Commerce Commission of the decision of the court in the *Minnesota Rate case* was erroneous. In the *Kansas City Southern case* the Supreme Court quotes the reasoning which led the commission to disregard the last part of section 2, * * *.

* * * * *

We believe, on the contrary, that it will not hasten the final report of the commission, and certainly will not hasten the final determination by the courts of

the railway valuation, because it is almost certain that this final decision will have to be made by the courts, owing to difference of view between different parties interested. It must be borne in mind that in view of existing law these railway valuations are of very great importance in many directions. They are to be used as a basis for rates at the present time and also as a basis for possible future consolidations or combinations. It is of great moment, therefore, that they be settled not only as promptly as possible but accurately. The Interstate Commerce Commission and the State commissions contend that under the Minnesota rate cases the court has decided—and that this decision has not been reversed by the *Kansas City Southern case*—that it is not proper to add the costs of acquisition to the present value of the lands, ascertained by the present cost of lands in the vicinity of the right of way. Accordingly, although the commission has found this cost, and in a manner which Director Prouty says is reasonably accurate, it has not in fact allowed this element of value to enter into its final valuations as reported.

If this bill becomes a law, apparently the first result will be that the Interstate Commerce Commission must recall their tentative valuations and eliminate therefrom the information which they have not obtained to carry out section 2 under the instruction of the court.

Mr. WHITE of Maine. That is the tentative valuation in the case of some 200 railroads.

Mr. MERRITT. Yes; but suppose that the contention of the railways turns out to be correct and that a proper interpretation of the *Minnesota rate cases* and the *Kansas City Southern rate case* is that the information called for by section 2 is a proper element to be considered in fixing a final value. Then we shall be in the position indicated in the *Monongahela case*—that we have tried by legislation to settle a judicial question, and then the Interstate Commerce Commission will have to do its work over

again. Stated in a practical manner, the information which the commission has already obtained in accordance with section 2 can do no harm. Whatever expense is involved has already been incurred and the information has been obtained. The valuations have not as yet been affected, according to the testimony of the commission, but the information is there so that the court can pass on it. If the information is removed by this legislation, and the court does not have it for its information, then it is quite possible that the whole matter may be set back and this necessary valuation be delayed for an unknown period.

It appears, therefore, that both on account of justice and for practical results this bill is unwise and should not be passed. (Cong. Rec., Vol. 62, Pt. 8, p. 8061.)

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REPRESENTATIVE DENISON (Illinois), on June 2, 1922, speaking before the House as a Committee of the Whole House on the state of the Union, for the consideration of the bill to amend section 19-a, said (Cong. Rec., Vol. 62, Pt. 8, p. 8067):

Now, this is the reason why I do not think we ought to pass this bill. By passing this bill we are directing the Interstate Commerce Commission to disregard the present cost of construction so far as land is concerned. Suppose we do that and the commission follows the mandate of Congress and disregards the present cost of construction, so far as land is concerned, and makes its valuation of property of the railroads, and the railroads object to the valuation because the commission has not taken into consideration an element which the Supreme Court of the United States through Mr. Justice Harlan said in *Smythe against Ames* is a proper or necessary element in ascertaining the value of the property. The result will be that the valuations will be set aside, just as verdicts in condemnation cases are set aside when the

jury have not been allowed to take into consideration elements of value that are proper to be taken into consideration. Congress can not say what evidence shall or shall not be taken into consideration by a jury in a condemnation proceeding. That is a question of law for the courts. We may pass laws limiting the evidence which may be considered, but such laws will not amount to anything. The Supreme Court will set them aside as invalid if we do not include all the elements that are necessary or proper to be considered in a condemnation proceeding in order that the constitutional requirement that private property may not be taken without just compensation may be satisfied.

* * * * *

The Constitution says that no one shall be deprived of his property without due process of law, and that private property shall not be taken for public use without just compensation. In order to determine the just compensation you have to determine the value of the property taken. The question of the evidence that shall be considered in determining the value of the property taken is a judicial question. It is not a legislative question. I am sure my friend from Nebraska recognizes that to be the case. Congress could not pass any law that would deprive any railroad or anyone else of any proper evidence to be considered in fixing the value of his property. To do so would be tantamount to depriving him of his property without due process of law or without just compensation.

It seems to me that the Supreme Court in the *Kansas City Southern case* (252 U. S. 178) conclusively settled the question involved in this proposed legislation, and that in view of that decision this bill ought not to be passed. The Interstate Commerce Commission accepted literally the views of the court as expressed in the *Minnesota Rate case* and governed their action in accordance with the language of the court in that case. The commission in presenting its

argument to the court in the *Kansas City Southern* case took exactly the position that is being taken to-day by those who are advocating this legislation.

REPRESENTATIVE MAPES (Michigan), on June 2, 1922, speaking before the House as a Committee of the Whole House on the State of the Union, for the consideration of the bill to amend section 19-a, said (Cong. Rec., Vol. 62, Pt. 8, p. 8061):

Mr. Chairman, the railroad valuation act requires the Interstate Commerce Commission in making and reporting the valuation of the railroads to state, among other things, "in detail and separately from improvements the original cost" and the "present value" "of all lands, rights of way, and terminals owned or used for the purposes of a common carrier," "and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value." This bill proposes to strike out the language "and separately the original and present cost of condemnation and damages or of purchase in excess of such original cost or present value." If the bill becomes a law the Interstate Commerce Commission will still be required to find both the original cost and the present value "of all lands, rights of way, and terminals" used for railroad purposes.

What does the language which the bill proposes to strike out mean? After giving some study and consideration to the subject I am willing for my part to subscribe to the statement of the chief counsel of the Interstate Commerce Commission in the hearings on a similar bill in the last Congress, "that nobody can tell." He says further "that it is absolutely impossible to construe" the language "so that you can do anything more than guess at the probable meaning that Congress intended to convey when it used those words," and that as a "practical matter" no man can do anything "except guess"

when he undertakes to comply with that provision of the statute.

* * * * *

What use is made of these findings of the excess cost after they have been found? The Bureau of Valuation and the Interstate Commerce Commission take the position that the excess-cost element is not a proper element to be considered in arriving at the present or real value of the railroad property, and they have not considered it in fixing the tentative values so far. They find the excess cost because they are required to do so by the statute as interpreted by the Supreme Court, but make no practical use of it. It is not considered by the commission as an element which should be included in arriving at the present value.

In view of this position of the commission it seems to be an idle procedure and an unnecessary expenditure of time and money to require it to find something which after it is found is put to no practical use.

If Congress could be assured that the courts would sustain the Interstate Commerce Commission in the position which it has taken in regard to the matter perhaps no harm could come from the present law further than the additional expense incurred and the time consumed in finding this excess cost. The danger, however, is that the courts will require the commission, in fixing the final valuations of the railroads, to take this excess cost into consideration unless this bill passes and this language is stricken out. The railroad representatives frankly say that they expect to test the matter in the courts and to ask the courts to compel the commission to include or consider the excess cost item as an element in the final valuation of the railroads.

If this is done, the importance of the matter is at once apparent. Nobody knows just how much it would mean, and the estimates vary widely. I have been told that the valuation of the lands, rights of way, and terminals of the railroads used for carrier

purposes on the excess-cost basis would be nearly double the present value of the same. I have also been told that the present value of the same—that is, the present value of the lands, rights of way, and terminals of the carriers used for carrier purposes—is about 25 per cent of the total valuation of the railroad property. The estimated total valuation of the property of the railroads now is \$18,990,000,000. Twenty-five per cent of that is over four and one-half billion dollars. If these figures are anywhere near accurate, it can readily be seen what it might mean to have this amount or any part of it added to the present tentative valuation of the railroad property for rate making and other purposes. (Cong. Rec., Vol. 62, Pt. 8, p. 8062.)

REPRESENTATIVE HOCH (Kansas), on June 2, 1922, speaking before the House as a Committee of the Whole House on the State of the Union, for the consideration of the bill to amend section 19-a, said (Cong. Rec., Vol. 62, Pt. 8, p. 8068):

I have here a list of the first 100 railroads upon which tentative final values have been fixed by the Interstate Commerce Commission. It so happens that practically all of them are small railroads, with a total mileage of only about 10,000 miles out of 245,000 miles upon which final values are ultimately to be fixed. Upon those first 100 railroads the commission finds that the present value of the railroad lands is \$42,240,816. We do not have all of the figures, but it is probable that the original cost of those lands was not over \$15,000,000. In other words, the present value is found, giving them a value of approximately three times what they originally cost. But that is not all they are asking. They are asking for this speculative reacquisition cost. The commission estimates it would cost, in addition to the present value, \$34,330,214. In other words, they figure that while the present value of the lands of those 100 railroads is \$42,240,816—and that gives

them the benefit of what other land has had in normal increase in value—the hypothetical cost of acquisition now, with other land values high as they are, would be \$76,580,930. And that is the value that the railroads are asking to have put upon their land.

As another specific illustration, take the case of the valuation put upon the land of the Rock Island Railroad in my own State of Kansas. The Interstate Commerce Commission recently issued its tentative final values upon the Rock Island. It fixes the present value of the Rock Island lands in Kansas at \$3,063,345. That figure gives to the Rock Island the benefit of the normal unearned increment—the increment enjoyed by other lands. But, following out the direction contained in the provision of the valuation act which we are here seeking to strike out, it figures the present cost of acquisition of the same lands at \$6,071,257. Now, since the Rock Island has those lands, and does not have to acquire them under the present state of development of the country, what reason or fairness is there in giving consideration to a speculation as to what it might cost the Rock Island to acquire them to-day? Is not an allowance of the present value all, in any view of the matter, that they are entitled to?

APPENDIX E

(Ante, p. 35)

STATEMENTS OF SENATOR OWEN AND REPRESENTATIVE OLMSTED ON EFFECT OF TENTATIVE AND FINAL VALUATIONS

SENATOR OWEN (Oklahoma), on February 24, 1913, speaking before the Senate as in Committee of the Whole, said (Cong. Rec., Vol. 49, Pt. 4, p. 3802, 3803):

Mr. President, the words "prima facie" in line 12 necessarily exclude finality. It is only prima facie as to the fact. The fact itself may be disputed; but the principle to which the Senator very properly refers would not appear in this finding.

The facts have been ascertained prima facie, the facts themselves being subject to correction, then the principle of whether or not the unearned increment could be capitalized and the public charged with interest upon the unearned increment is a principle to be determined by the court upon debate. Facts, merely, are ascertained; and even the facts are not ascertained with complete finality, but merely prima facie.

The Senator from Minnesota points out that the statement that "If, upon the trial of any action involving a final value," the value fixed by the commission, "evidence shall be introduced regarding such value which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto," it shall send it back for ascertainment of the fact before the court proceeds—is only a declaration that this finding of fact upon certain evidence submitted shall not be final, but may be again sent back if those concerned offer additional evidence which was not before the commission. The purpose of that section is to prevent a trick of discrediting those who find the facts by submitting to those charged with the finding of the facts incomplete evidence which afterwards is more completely submitted to the court, and the court,

finding that additional evidence or materially different evidence is submitted to the court from that which was originally submitted to the commission, simply sends it back, as a court would send a case back to a commissioner to further ascertain the fact upon new evidence.

That answers the question of the Senator from Minnesota. I have already answered the question submitted by the Senator from Kansas.

REPRESENTATIVE OLMSTED (Pennsylvania), on December 3, 1912, Concerning the Committee Report, said (Cong. Rec., Vol. 49, Pt. 1, p. 71):

We are given to understand that the valuation is for the purpose of assisting the commission in fixing the rates which may be charged by common carriers. It is to be one of the elements at least. The rates which a common carrier may charge, the right to charge a rate, is its most important right. Without that right a railroad would have very little physical or other valuation, and it seems to me that in a matter so important as that the common carrier itself ought to have some notice of the taking of testimony and the right to be present and examine and cross-examine witnesses.

That is the sole purpose and object of my proposed amendment. If the physical valuation of railroads, which is to be determined by the commission in the matter pointed out by this bill, is to be used as the basis for the fixing of rates by the Interstate Commerce Commission, it is no more than fair and equitable, and in harmony with universally recognized principles of enlightened civilization, that the party to be affected shall have notice and an opportunity to be heard. It is true that the bill does provide that after the Interstate Commerce Commission, through its agents, experts, or other assistants, shall have concluded the taking of testimony, and the commission, based upon such testimony, shall have adjudicated the matter and fixed the valuation, the carrier may have 30 days

within which to file a protest, and that upon the filing of any protest by a common carrier—

“The commission shall fix a time for hearing the same and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented by such common carrier in support of its protest so filed.”

The bill, however, makes no provision for the taking of testimony upon such a hearing. If witnesses were desired to be recalled for examination or cross-examination, the common carrier would have to hunt them up, and it would have no power to compel their attendance. The whole proceeding would be, in any event, anomalous and unreasonable. It would be like depriving a defendant of the right to participate in the taking of testimony on the trial of his case and then allowing him the mere right to file a protest after the court shall have entered judgment against him. There is no State in this Union under the laws of which \$10 worth of property could be taken from any man in a proceeding in which he was not permitted to cross-examine the witnesses produced against him or to call witnesses in his own behalf; and surely that ordinary right and privilege ought not to be denied in a matter the determination of which may, and in many instances will, involve millions of dollars. This is, in any event, a remarkable provision in the bill, that “for the purpose of such an investigation and ascertainment of value, the commission is authorized to employ such engineers, experts, and other assistants as may be necessary, who shall have power to administer oaths, examine witnesses, and take testimony.”

My amendment adds, after the word “testimony,” these words: “Upon three days’ notice to the common carrier which shall be permitted to attend by counsel or otherwise and examine or cross-examine witnesses and to call and examine other witnesses.”

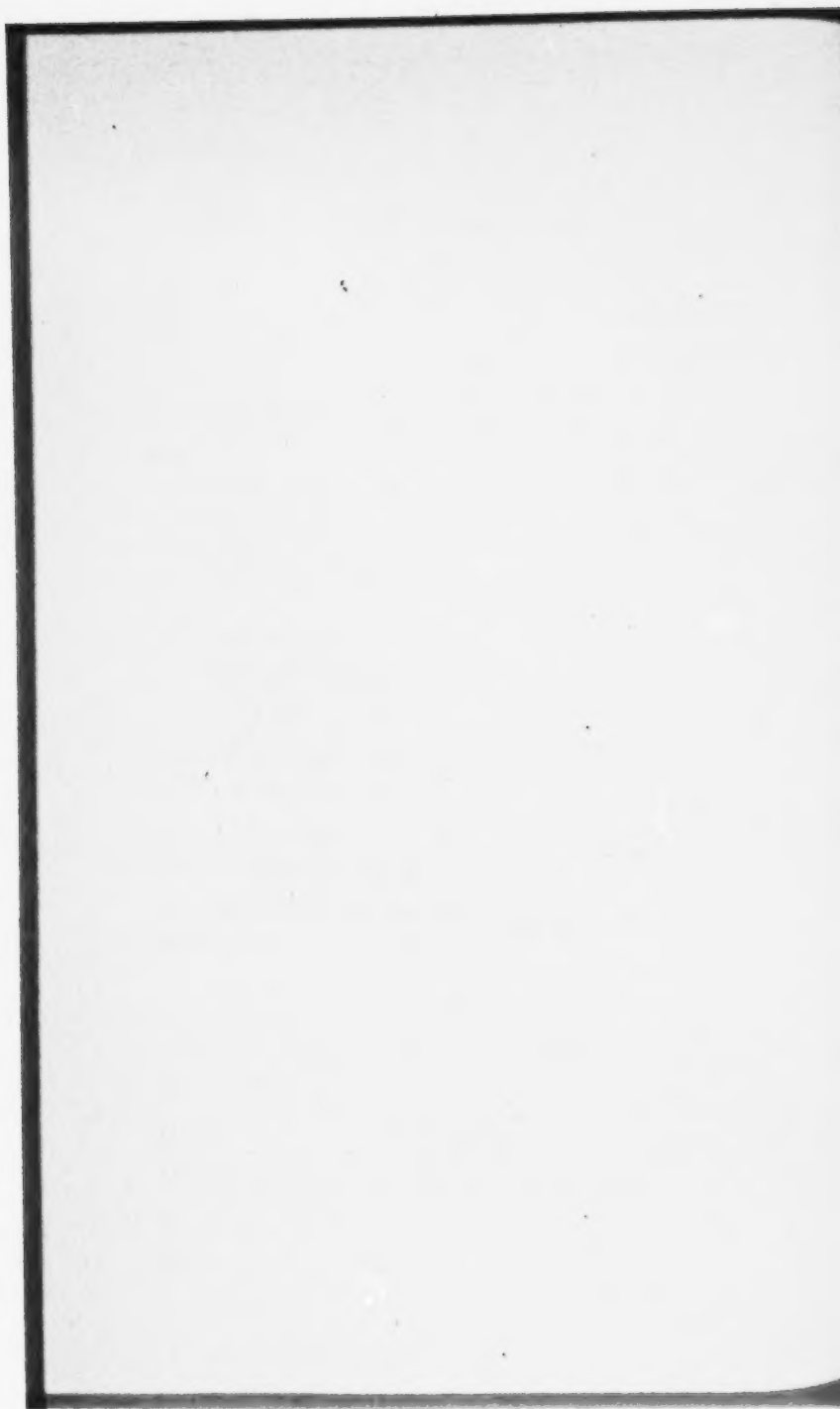
It seems to me that, upon the commonest principles of justice, the amendment ought to prevail.

SUBJECT INDEX.

	Page.
STATEMENT	1-6
 ARGUMENT:	
I. THE FACTS PLEADED ARE NOT SUFFICIENT TO ENTITLE PETITIONERS TO RELIEF IN EQUITY.....	6-14
II. THE ORDER OF MARCH 28, 1923, IS SIMPLY AN INTERLOCUTORY ORDER OF THE COMMISSION, WITH WHICH THE COURT WILL NOT INTERFERE UNDER THE CIRCUMSTANCES DISCLOSED BY THE RECORD IN THIS CASE.....	14-17
III. THE QUESTIONS PRESENTED FOR DETERMINATION BY THE PETITION ARE NOT COVERED BY THE GENERAL EQUITY JURISDICTION OF THE COURT, BECAUSE THEY ARE INVOLVED IN AND DEPEND UPON THE PROVISIONS OF THE INTER-STATE COMMERCE ACT.....	17-18
IV. THE PETITION DOES NOT SHOW THAT APPELLANTS OR ANY OF THEM WILL SUFFER LEGAL INJURY OR BE HARMED IN ANY WAY IF THE RELIEF ASKED FOR IN AND] BY THE PETITION IS NOT GRANTED BY THE COURT.....	18-19

TABLE OF CASES.

<i>Interstate Commerce Commission v. Humboldt Steamship Company</i> , 224 U. S. 474.....	17
<i>Lane v. Mickadiet</i> , 241 U. S. 201.....	16
<i>New England Divisions case</i> , 261 U. S. 184.....	11,12
<i>Proctor & Gamble v. United States</i> , 225 U. S. 282.....	17
<i>Texas Midland Railroad</i> , 1 Val. Rep. 1, 108.....	14
<i>The San Pedro, Los Angeles & Salt Lake Valuation case</i> , 75 I. C. C. 463.....	9



In the Supreme Court of the United States.

OCTOBER TERM, 1924.

THE DELAWARE AND HUDSON COM-
pany, et al., appellants

v.

THE UNITED STATES OF AMERICA AND
Interstate Commerce Commission,
appellees.

In Equity,
No. **212**

BRIEF FOR INTERSTATE COMMERCE COMMISSION.

STATEMENT.

This is an appeal from a final decree of the District Court of the United States for the Southern District of New York, declining to enjoin enforcement of a tentative valuation order of the Interstate Commerce Commission, dated March 28, 1923, and dismissing the petition filed in that court by appellants. In describing the subject matter of complaint and the issues relating thereto raised by the pleadings of the parties, and in calling attention to evidence introduced on behalf of the appellants, the lower court said:

The Interstate Commerce Act as amended (Sec. 19a) requires the Commission to "investigate, ascertain and report the value of all the property owned or used by every com-

mon carrier subject to the provisions of this act."

The Commission having arrived at a valuation of the property of the petitioners, has embodied the same in what is called a "tentative valuation" in subsections f and h of said Section 19a.

Petitioners being dissatisfied with said "tentative valuation," bring this petition seeking a decree that said "tentative valuation" of the Commission "be set aside, annulled, and suspended, and that a permanent injunction issue preventing the entry of any order fixing final value before a lawful tentative valuation has been made."

The present motion is, in the language of the petition, for "an interlocutory injunction suspending and restraining the enforcement, operation, and execution of said (tentative valuation) in whole or in part and setting the same aside."

The motion coming on to be heard before the above-named Judges pursuant to Jud. Cod. Sec. 266, petitioners filed certain affidavits in support of said motion, and proved that they had on or about May 10, 1923, and within thirty days of the filing of said tentative valuation filed a "protest of the same" pursuant to said Interstate Commerce Act, Sec. 19a, subsection h; and thereupon both the respondent and the intervenor filed motions to dismiss the petition substantially on the following grounds:

1st. The Court has no jurisdiction over the subject matter of the petition and may not

properly grant any portion of the relief prayed for therein;

2d. The facts pleaded are insufficient to entitle petitioners to any relief in equity. (Rec. 256-257.)

In pointing out the particulars wherein appellants contend that the tentative valuations of the Commission are not a full compliance with said section 19a, commonly called the Valuation Act, and in stating its conclusions in the premises, the lower court further said:

An examination of the petition and a comparison thereof with the protest filed by petitioners shows that the substance of complaint may be summarily stated as follows: The Commission did not ascertain the original cost to date of each piece of property other than land used by petitioners for common carrier purposes; it did not report in detail the original cost of lands, rights of way and terminals owned or used for common carrier purposes by petitioners; it did not report the original cost and present value or either of any property held by petitioners for purposes other than those of a common carrier; it omitted certain specified railroad tracks or portions thereof which one of said petitioners is entitled to use as well as certain other railway and/or terminal adjuncts used by one of the petitioners jointly with other carriers; and it did not report the value as a *whole* of the properties of petitioners.

We have not set forth all the objections of petitioners, but the above are sufficient to in-

dicating the kind of objection made, on which and by reason of which it is demanded that the "tentative valuation" be suppressed and held for naught.

We repeat that we regard this "tentative valuation" under the statute as an *ex parte* appraisal. Any such matter necessarily gives rise to many differences of opinion. The evident object of the statute is to ascertain for purposes of rate making and money borrowing the reasonable and probable going value of that property which is devoted to serving the public as a common carrier. What particular pieces of property are so used is oftentimes matter of opinion about which honest and well-informed men may differ. As to original cost, it is to be remembered that at least one of these petitioners can trace its corporate life backward for nearly a century; and the ascertainment of some items of original cost, as well as added cost, may be in the opinion of many if not most men a veritable impossibility.

No statute law should be held to require the impossible unless the language thereof permits of any [no] other interpretation. It would serve no useful purpose to go into detail, but after examination this court is of opinion that the Commission's "tentative valuation" complies with the spirit of the statute, and on its face comes as near to complying with the letter as the facts permitted, in the Commission's opinion.

Argument has developed as petitioners' legal position, that they are entitled to a literal

compliance with the statute because the protest (treated as a pleading) puts them in the position of plaintiffs upon whom lies the burden of proving that the "tentative valuation" is erroneous, incomplete or otherwise unjust.

We perceive no force in this objection; and think that the protest no more than serves to limit discussion of the questions of fact and law which must arise upon any such valuation.

If the statute required no tentative valuation and petitioners asserted (as they do assert by their published accounts) a certain stated value for their possessions, it would still and always be incumbent upon them to prove the correctness of their own figures. They are in no worse position by reason of anything that has been done.

Entertaining these views, we are of opinion (1) that the Commission has reasonably complied with the requirement of the statute in respect of "tentative valuation," and (2) that the petitioners are not placed in any legally disadvantageous position by any act of the Commission.

We therefore conclude that there is no equity in this application to suppress a merely preliminary step in a lawful valuation proceeding, and for that reason dismiss the petition without costs. (Rec. 258-259.)

Appellants' assignments of error are nineteen in number, but, aside from those which are general in character, we think the assignments may be summarized as follows:

In view of the errors of omission and commission shown by the allegations contained in

the petition, the court erred in holding that the tentative valuation order of March 28, 1923, constitutes a reasonable compliance with the Valuation Act of March 1, 1913.

ARGUMENT

I.

THE FACTS PLEADED ARE NOT SUFFICIENT TO ENTITLE PETITIONERS TO RELIEF IN EQUITY.

Appellants' objections to the tentative valuation order of March 28, 1923, are set forth in Paragraph XVIII of the petition as follows:

1. It was not preceded by the investigation prescribed by said Section 19a and is not based upon the results or record of any such investigation.

2. Said Commission refused to include large amounts of property owned or used by petitioners.

3. Said Commission refused to apply and use, or to attempt to apply or use, the actual and current prices prevailing on the date of the inventory or inventories on which it relied.

4. Said Commission refused to value the actual working capital of petitioners but instead of so doing reported a value arbitrarily resulting from the use of an arbitrary general formula.

5. It does not purport to contain a report of the original cost to date of the property used for common carrier purposes.

6. It does not purport to contain a report of the original cost of the lands, rights of way,

and terminals used for common carrier purposes, ascertained as of the time of dedication to public use or otherwise.

7. It does not purport to contain a report of the original cost, or the present value, of the property held for purposes other than those of a common carrier.

8. It does not purport to contain a report of the value of the property or properties as a whole.

9. It does not purport to contain a report of the value of the property or properties as a whole in each, or any, of the separate States in which located.

10. It does not purport to contain a report of other values and elements of value that are not included in the several costs enumerated in said Section 19a.

11. It does not purport to include an analysis of the methods by which the several costs were ascertained or the reasons for their differences.

12. It does not purport to include an analysis of the methods of valuation employed or the reasons for the differences between other values and elements of value and the cost values or any of them.

13. It does not purport to contain an analysis of the methods of valuation employed in respect of property held for purposes other than those of a common carrier. (Rec. 11.)

No separate answer will be made to objection No. 1 for the reason that it appears to be based upon statements included in some of the other objections.

No. 2 relates to the use for common-carrier purposes of certain railroad tracks and terminal facilities, described in Paragraphs XIII and XIV of the petition and owned by the Erie Railroad Company and other common carriers, jointly by appellant, The Delaware and Hudson Company, and said owners. The Commission has tentatively concluded that said properties must be inventorized to the owning carriers, and that under the circumstances described it would not be proper to include any portion thereof in the inventory of said appellant. In this connection we call attention to paragraph (1) of section 15a of the interstate commerce act, which shows that expenditures to be made by said appellant for the right to use in part properties owned by other common carriers as aforesaid, jointly with said other common carriers, are to be deducted from said appellant's operating revenues in determining its net railway operating income. Pertinent language contained in said paragraph (1) is as follows:

* * * and the term "net railway operating income" means railway operating income, including in the computation thereof debits and credits arising from equipment rents and joint facility rents.

It will be observed that rentals paid for the right to use the railroad tracks and terminal facilities mentioned, by said appellant to said owners, must be included in the railway operating revenues of the latter, but are to be deducted from the railway operating revenues of said appellant in computing

its net railway operating income. If the owners of said railroad tracks and terminal facilities are thus to be charged with all revenues derived from the use of those properties, it follows, we submit, that the properties and their values should be included in their entirety in the inventories of such owners, and that no part of any of the properties should be included in the inventory of said appellant.

A sufficient answer to No. 3 appears to us to be contained in the Commission's report in *The San Pedro, Los Angeles & Salt Lake Valuation case*, 75 I. C. C. 463, from which we quote as follows:

The unit prices.—In making the estimate of cost of reproduction new of structures in use on the date of valuation, the unit prices applied were those found to obtain June 30, 1914, and during the five years, and in some instances, the 10 years, prior thereto. At the beginning of the valuation work we deemed it advisable, for purposes of comparison, and also for the purposes of securing a base for future use in fixing values as of later dates, to price all common-carrier structures as of a common date. After somewhat extensive investigation in this connection we concluded that June 30, 1914, would be a proper date to use for these purposes, and that prices arrived at in the manner heretofore described could reasonably be called normal prices for a period of time extending over a period of at least 5 or 10 years prior to that date. At that time we did not, and of course could not, foresee the material increases which have been brought

about by the World War, but we believe what we have done would have been proper even if we had been able in 1914 to foresee what has taken place since. (Id. 474.)

No. 4 relates to working capital. For this item the Commission included in its final value of the property owned and used for common-carrier purposes by appellant, The Delaware and Hudson Company, the sum of \$2,195,100. (Rec. 32.)

If this sum is not correct, said appellant will, of course, be afforded a full and fair opportunity to prove that fact in the hearing before the Commission upon its aforesaid protest, which will be held hereafter in accordance with the provisions of paragraph (i) of the Valuation Act. If the Commission's tentative conclusion concerning the amount to be included for working capital is finally found to be correct, the manner in which that conclusion was arrived at will not be a matter of importance, but we think it is apparent that no conclusion in the premises can properly be reached until after the hearing referred to has been held.

Nos. 5 and 6 relate to original cost of property used for common-carrier purposes. In Paragraphs VI and VII of the petition it is admitted that the Commission reported the original cost mentioned to the extent that, in its opinion, it was possible to do so from appellants' records and other records. If appellants have information concerning original cost which was not discovered by the Commission in the *ex parte* investigations conducted by it prior to

the making of the tentative valuations covered by the order of March 28, 1923, it will have an opportunity to impart that information to the Commission for its consideration in the hearing to be held as aforesaid under paragraph (i) of the Valuation Act.

Nos. 7, 8, 9 and 13 relate to duties which can be performed by the Commission only after it has made a full and complete investigation in connection with the properties held by appellants for purposes other than those of a common carrier. The final values included in the tentative valuations under consideration here do not include, and are not intended to include, final values of any properties other than those used by appellants for common-carrier purposes. The right of the Commission to operate in this manner, that is to say, to perform first the duties it regards as important and urgent and to defer until a later date the performance of duties it considers less important and urgent, was recognized by this court in the *New England Divisions case*, 261 U. S. 184. In that case it was contended that the order of the Commission involved was invalid because it did not cover fully the subject matter to which it was related, and in holding the contention to be unsound this court said:

A hearing may be a full one, although the evidence introduced does not enable the tribunal to dispose of the issues completely or permanently; and although the tribunal is convinced, when entering the order thereon, that, upon further investigation, some changes in it will have to be made. To grant under

such circumstances immediate relief, subject to later readjustments, was no more a transfer of revenues pending a decision, than was the like action, in cases involving general increases in rates, a transfer of revenues from the pockets of the shippers to the treasury of the carriers. That the order is not obnoxious to the due process clause, because provisional, is clear. If this were not so, most temporary injunctions would violate the Constitution. (Id. 201.)

The principle involved in the *New England Divisions case*, and covered by the above quotation, appears to us to be the same as the one involved in this case and covered by the objections last above referred to. There, as here, the Commission made an order which was not entirely comprehensive of the subject matter it had under consideration, but which was appropriate and capable of definite application. We therefore submit that the order of March 28 is not invalid simply because the final values included therein are confined to properties used for common-carrier purposes and do not cover also properties held for purposes other than those of a common carrier.

Nos. 10, 11, and 12 relate to duties imposed upon the Commission by paragraph (b) First of the Valuation Act, which reads as follows:

In such investigation said Commission shall ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of repro-

duction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The Commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences between any such value and each of the foregoing cost values.

Concerning the "other values and elements of value" referred to, the Commission, in the next to the last paragraph of each of the tentative valuations involved, said:

No other values or elements of value to which specific sums can now be ascribed are found. (Rec. 32, 37, 43, 47, 49, 52, 55, 58, 62, 64.)

In the absence of any "other values or elements of value" to which they could be applied, it is apparent that the "analysis of methods" and "reasons for differences," which are mentioned in objection No. 12, could not be made the subject of a report by the Commission.

The "analysis of methods" and "reasons for differences" referred to in objection No. 11, and which are called for by the provisions contained in the first portion of said paragraph (b) First, are covered by a paragraph contained in said order of March 28, 1923, under the heading "In General," which reads as follows:

Reference is made to Appendix 3 of the report in *Texas Midland Railroad*, 1 Val. Rep.

1, 108, which is hereby made a part hereof, for a statement of the methods employed and of the reasons for the differences between the various cost values reported. (Rec. 64.)

The appendix mentioned begins on page 108, as stated by the Commission as aforesaid, and ends on page 186, and an examination of same will show that it is very full and complete. Since the appendix is made a part of each of the tentative valuations covered by the order of March 28, 1923, we find it difficult to understand why objection No. 11 was included in their petition by appellants.

We respectfully submit that the matters to which we have called attention under this heading fully justify the lower court's holding that the tentative valuation of March 28, 1923, constitutes a reasonable compliance with the Valuation Act of March 1, 1913.

II.

THE ORDER OF MARCH 28, 1923, IS SIMPLY AN INTER-LOCUTORY ORDER OF THE COMMISSION, WITH WHICH THE COURT WILL NOT INTERFERE UNDER THE CIRCUMSTANCES DISCLOSED BY THE RECORD IN THIS CASE.

In so far as any proceedings in court are contemplated by the interstate commerce act, it will be observed, from an examination of paragraphs (h), (i) and (j) of section 19a of the act, commonly called the Valuation Act (Rec. 4-5), that the jurisdiction of the court is not to be exercised until after there has been a hearing before the Commission upon matters covered by any protest or protests which

may be filed against the tentative valuation and a determination of such matters by the Commission. In other words the court is not to assume jurisdiction over, or act in connection with, any question either of law or of fact advanced in support of such objections as may be made to the tentative valuation until after the Commission has had an opportunity to do so. That appellants are endeavoring to deprive the Commission of such an opportunity is clearly shown by the petition, and we therefore insist that by instituting this suit in court the appellants have acted prematurely in the premises.

In speaking of the issues raised by the protests filed by appellants on or about May 10, 1923, the lower court, as hereinbefore shown, said:

Having raised these two questions, however, petitioners bring what is practically a bill in equity for the purpose of avoiding the necessity of trying the issues presented in the manner aforesaid; such prevention of trial being brought about by demanding a decree totally suppressing said "tentative valuation." (Rec. 257.)

Argument has developed as petitioners' legal position, that they are entitled to a literal compliance with the statute because the protest (treated as a pleading) puts them in the position of plaintiffs upon whom lies the burden of proving the "tentative valuation" is erroneous, incomplete or otherwise unjust.

We perceive no force in this objection; and think that the protest no more than serves to

limit discussion of the questions of fact and law which must arise upon any such valuation. (Rec. 259.)

The order of March 28 was made, and served upon appellants and other interested parties, for the purpose of affording to them an opportunity to have heard and determined by the Commission matters included in such protests against the tentative valuations covered by the order as they might see fit to make, and also to give to the Commission an opportunity to make such changes in the tentative valuations as it may consider necessary and proper after the hearing has been held.

In *Lane v. Mickadiet*, 241 U. S. 201, this court, speaking by Mr. Chief Justice White, said:

* * * As there is no dispute, and could be none, concerning the general rule that courts have no power to interfere with the performance by the Land Department of the administrative duties devolving upon it, however much they may when the functions of that Department are at an end correct as between proper parties errors of law committed in the administration of the land laws by the Department, it must follow that unless it be that this case by some exception is taken out of the general rule that there was no power in the court below to control the action of the Secretary of the Interior and reversal therefore must follow, * * *. (Id. 207-208.)

If the courts will not interfere with the performance by the Land Department of an administrative duty devolving upon it, until after the functions of that

department are at an end, it necessarily follows, we submit, that the courts will not interfere with the performance by the Commission of the duty of determining questions presented by protests filed with the Commission against tentative valuations like those under consideration here, until after the functions of the Commission are at an end. In *Interstate Commerce Commission v. Humboldt Steamship Company*, 224 U. S. 474, pertinent language used by this court was as follows:

* * * The Interstate Commerce Commission is purely an administrative body,
* * *. (Id. 484.)

III.

THE QUESTIONS PRESENTED FOR DETERMINATION BY THE PETITION ARE NOT COVERED BY THE GENERAL EQUITY JURISDICTION OF THE COURT, BECAUSE THEY ARE INVOLVED IN AND DEPEND UPON THE PROVISIONS OF THE INTERSTATE COMMERCE ACT.

Reasons in support of this point were clearly and concisely stated by the court in its decision in *Procter & Gamble v. United States*, 225 U. S. 282, from which we quote as follows:

Some suggestion is made in argument concerning the alleged claim of constitutional right asserted in the petition filed below and which the court disposed of in the manner we have stated. But what we have said suffices to point out the fallacy which the contention involves, for the following reasons: If the claim of constitutional rights concerned a subject which from its very nature and effect dominated the act to regulate

commerce and therefore was wholly independent of all questions of right or remedy created by or depending upon that statute, then the issue presented a controversy not cognizable in the Commerce Court, as it could not so be without violating the express reservation and restriction as to the general power of the Circuit Courts which we have just quoted. If, on the other hand, the constitutional question was involved in or depended upon the provisions of the act to regulate commerce that question in the nature of things was subject to the precedent action of the Commission on the subjects committed to it by the act to regulate commerce and as to which the court had jurisdiction alone to act in virtue of a prior affirmative order of the Commission. (Id. 301.)

If the court were to take such action in this case as is requested in the prayer of appellants' petition, we think the inevitable result would be to unduly interfere with and disarrange the method of procedure before the Commission and in court provided for in paragraphs (h), (i) and (j) of the Valuation Act, to which we have previously referred.

IV.

THE PETITION DOES NOT SHOW THAT APPELLANTS OR ANY OF THEM WILL SUFFER LEGAL INJURY OR BE HARMED IN ANY WAY IF THE RELIEF ASKED FOR IN AND BY THE PETITION IS NOT GRANTED BY THE COURT.

We have shown that the language of the Valuation Act does not provide for or contemplate any proceedings in court until after final action in the premises has been taken by the Commission, but there is

another reason why we believe it to be apparent that this suit can not be maintained by appellants. In speaking collectively of the tentative valuations covered by the order of March 28, 1923, the lower court, as hereinbefore shown, said:

* * * Such valuation is without any probative effect *per se*; no proceedings can be based thereupon, and it is no more than a preliminary opinion expressed by the Commission. We think the so-called "tentative valuation" is properly described as an *ex parte* appraisal. (Rec. 257.)

Because of the statements thus made by the lower court, the correctness of which we feel certain will not be questioned by counsel for appellants, we are unable to understand how it can be consistently contended that appellants or any of them will be subjected to legal injury or be harmed in any way if the order referred to is not annulled and set aside by the court.

For the reasons above set forth we insist that the appeal in this case should be dismissed.

Respectfully submitted.

P. J. FARRELL,
For Interstate Commerce Commission,
Appellee.

THE DELAWARE AND HUDSON COMPANY ET
AL. v. UNITED STATES AND INTERSTATE
COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 212. Argued November 19, 1924.—Decided January 5, 1925.

1. A "tentative valuation" of a carrier's property made by the Interstate Commerce Commission under § 19a of the Interstate Commerce Act, as amended, is no more than an *ex parte* appraisal without probative effect. P. 448.
 2. By the authorized "protest," a carrier may offer objections to anything done or omitted in respect of such tentative valuation and secure the Commission's rulings before the valuation becomes final. *Id.*
 3. Where there is nothing to indicate that, in making such tentative valuation, the Commission has wilfully disregarded the law, as honestly interpreted, or failed to proceed in an orderly manner, or that it will not consider and pass upon all matters set up in a protest filed by the carrier before arriving at its final valuation, a suit to annul the tentative valuation will not lie. *Id.*
- 295 Fed. 558, affirmed.

APPEAL from a decree of the District Court dismissing on motion, for want of equity, a suit to set aside a tentative valuation of the plaintiffs' railroad properties.

Mr. H. T. Newcomb, with whom *Mr. Walter C. Noyes* was on the briefs, for appellants.

The order of March 28, 1923, does not comply with the valuation Act.

Appellants' petition alleges, not merely omissions and neglect to comply with the law, but numerous specific refusals to do and to report the things which the law specifies. These well-pleaded facts are admitted by the motions to dismiss, filed by the United States and the Commission. *Chicago Junction Case*, 264 U. S. 258, 262,

263; *Detroit United Ry. v. Detroit*, 248 U. S. 429; *Oklahoma Gas Co. v. Russell*, 261 U. S. 290.

The Commission has, by its own admission, attempted to exercise the "general power which the Act of Congress gave," i. e., the power to make a "tentative valuation," but, in the very act of doing so, has again committed the error of "disregarding the essential conditions imposed by Congress upon its exercise." *Kansas City So. Ry. Co. v. Interstate Commerce Comm.*, 252 U. S. 178.

Appellants are entitled to a lawful "tentative valuation" as the statutory foundation for further proceedings in the statutory process.

More fully stated, the foregoing proposition amounts to this: That (a) the term "tentative valuation" is defined by § 19a; (b) the Commission cannot make anything a "tentative valuation" that departs substantially from the statutory definition; (c) if the law is obeyed in matters of form and substance, the preparation of the "tentative valuation" is otherwise entirely controlled by the Commission; (d) a lawful "tentative valuation" marks the completion of an *ex parte* proceeding and opens the door for an inter-party proceeding; (e) this inter-party proceeding is, or may be, begun by a protest and in it the "tentative valuation" imposes upon the protestant the burden of proof to show that it ought to be altered; (f) Congress intended that all protestants (the public as well as the carrier may protest) should have all the matters set forth in the statutory definition of a "tentative valuation" for their protection in this inter-party proceeding; and (g) appellants, having been denied a lawful "tentative valuation," will be greatly at disadvantage if the inter-party proceeding is allowed to go forward before a lawful "tentative valuation" has been made, and they have had the full statutory opportunity to base a protest thereon. They have no means

of enforcing their right to a lawful "tentative valuation" save this proceeding.

Appellants consider that Congress intended to make the "tentative valuation" *prima facie* evidence in the subsequent proceedings leading to a "final valuation." It is recognized that the term is not so applied in the statute and the District Court concluded otherwise, holding that it is "without any probative effect *per se*."

Such, however, is clearly not the view of the Commission. *Durham & South Carolina R. R.*, 84 I. C. C. 313.

By the Valuation Act, the initiative in valuation was placed with the Commission, an initiative that ordinarily carries with it the burden of affirmative proof. The right to require this proof according to the ordinary forms and rules of evidence was taken from the carriers, and Congress sought to set up an equivalent in a meticulously defined "tentative valuation." The right to have the other side prove its case is always a substantial right, although the legislature may, when it does not act unreasonably or arbitrarily, modify the rules of evidence, shift the burden of proof, make one fact *prima facie* evidence of another and establish presumptions.

In the determination of "final valuations," in proceedings upon protests to "tentative valuations," the Commission consistently treats the latter as having evidentiary force beyond that ordinarily attributed to mere *prima facie* evidence. [Numerous citations to reports of the Commission.]

In fixing railway rates and other matters within its authority, the Commission consistently treats its "tentative valuations," and even the inquiries of its Bureau of Valuation that are preliminary to "tentative valuations," as having evidentiary weight. [Numerous citations to reports of the Commission.]

This is a suitable proceeding in which appellants are entitled to relief against the order. 36 Stat. 539; 38 Stat.

219; *Seaboard Air Line Ry. Co. v. United States*, 254 U. S. 57; *Interstate Commerce Comm. v. Union Pac. R. R. Co.*, 222 U. S. 541.

Power to make the order, power which must be found within a statutory grant, is the question the courts must determine. *Interstate Commerce Comm. v. Illinois Cent. R. R. Co.*, 215 U. S. 452.

The statute will be searched in vain in the effort to find a grant of power to make a "tentative valuation" departing so widely and in such fundamentally important particulars from the statutory definition. The authority granted is to comply with the statute, not to deny and evade its basic principle, namely, that the "tentative valuation" must comprehensively, and in the lawful detail, inform all parties in interest, public and corporate, of what they have to meet and overcome if they are dissatisfied with its conclusions. *Interstate Commerce Comm. v. Union Pac. R. R. Co.*, 222 U. S. 541; *Southern Pac. Co. v. Interstate Commerce Comm.*, 219 U. S. 433; *Interstate Commerce Comm. v. Chicago, etc. Ry. Co.*, 218 U. S. 88; *United States v. New River Co.*, 265 U. S. 533.

In several cases orders of the Commission have been set aside because it has misconstrued the meaning of such terms as "lateral branch line" and "reasonable and satisfactory through route." *Interstate Commerce Comm. v. Delaware, etc. R. R. Co.*, 216 U. S. 531; *United States v. Baltimore, etc. R. R. Co.*, 226 U. S. 14; *Interstate Commerce Comm. v. Northern Pac. Ry. Co.*, 216 U. S. 538; *Harriman v. Interstate Commerce Comm.*, 211 U. S. 407.

Orders of the Commission may be set aside, when not in accordance with the statutory grant of power, even though those seeking relief were not parties to the proceedings before the Commission. *Interstate Commerce Comm. v. Diffenbaugh*, 222 U. S. 42; *Skinner & Eddy*

Co. v. United States, 249 U. S. 557; *Hines Trustees v. United States*, 263 U. S. 143; *Atlantic Coast Line R. R. Co. v. Interstate Commerce Comm.*, 194 Fed. 449; *Louisiana & Pac. Ry. Co. v. United States*, 209 Fed. 244.

Appellants recognize that there are some orders of the Commission which are exempt from judicial review. *United States v. Illinois Cent. R. R. Co.*, 244 U. S. 82; *Procter & Gamble Co. v. United States*, 225 U. S. 282; *Manufacturers Ry. Co. v. United States*, 248 U. S. 457.

Determination of value, under statutes of this character, is a function legislative in character. *Keller v. Potomac Electric Co.*, 261 U. S. 428; *Chicago Junction Case*, 264 U. S. 258.

The real test, upon an application to enjoin or set aside an order of the Commission, is whether granting the relief sought would constitute an exercise by the court of any administrative function that has been properly delegated to the Commission.

The order now before this Court is a final order in the sense that it establishes the only "tentative valuation" which the appellants can obtain from the Commission if it is treated as a "tentative valuation" and is not set aside in this proceeding. And a "tentative valuation" is as final, as a "tentative valuation," and for the purposes for which it is made, as any order of the Commission can be. *Prendergast v. New York Tel. Co.*, 262 U. S. 43.

The order is affirmative. *Intermountain Rate Cases*, 234 U. S. 476. It constrains appellants either to let a "tentative valuation," which in scarcely any particular complies with the law, ripen into a final valuation, or to proceed, in difficulty and darkness, to attack, a "valuation" as to essential elements of which they are not advised.

It may be argued that appellants began this proceeding prematurely and that it was their duty to proceed

upon the order, as though it were a lawful "tentative valuation," thereby somewhat indefinitely postponing their need of relief. The delay might be long and it would certainly be injurious. Moreover, the opportunity for a lawful "tentative valuation" would have been allowed to pass and the proceedings subsequent to the "tentative valuation," which the law prescribes, would have gone forward upon an injurious, irregular, and unlawful foundation. Parties are not required to submit to such damage or to such delays. *Oklahoma Gas Co. v. Russell*, 261 U. S. 290; *Pennsylvania v. West Virginia*, 262 U. S. 553.

Such a postponement might have forced appellants into many successive situations in which they would have been obliged repeatedly to seek relief in the courts. *Kansas City So. Ry. Co. v. Interstate Commerce Comm.*, 252 U. S. 178.

The extraordinary provisions of par. j of § 19a, limiting the method and scope of judicial review of any determination of "final value" under that section, suggest, at least, that unless the "tentative valuation" can afford the requisite opportunity for correcting errors of law and abuses of discretion or power on the part of the Commission, the whole of § 19a may be unconstitutional and void. Courts will construe acts of legislation in such a way as to avoid constitutional defects and grave doubts as to constitutionality. *Keller v. Potomac Electric Co.*, 261 U. S. 428; *Bluefield Co. v. Public Service Comm.*, 262 U. S. 679.

Mr. Blackburn Esterline, Assistant to the Solicitor General, with whom Mr. Solicitor General Beck was on the brief, for the United States.

The tentative valuation is not justiciable.

If the petitioners may maintain the petition to strike down the tentative valuation, other carriers may do likewise, *ad infinitum*, until all of the tentative valuations

have become the subject of equity proceedings in the District Courts.

Also, if the equity proceedings are allowed as against the tentative valuation, they would, if unsuccessful, undoubtedly be recommenced after the final valuation.

If the petition of appellants may be maintained, there are (a) the hearing on the petition in the court to enjoin the tentative valuation; (b) the hearing on the protest before the Commission; (c) the hearing on the second petition in the court to enjoin the final valuation; (d) the hearing on the evidence offered before the court in judicial proceedings in which the final valuation shall be *prima facie* evidence of value. Add to all of these the right to file the petition for writ of mandamus, *Kansas City So. Ry. Co. v. Interstate Commerce Comm.*, 252 U. S. 178, and we shall have at least five separate proceedings, through which the carriers may contest the work of the Commission under the Valuation Act which does not meet with their approval. Obviously with such unlimited judicial review the attempt at physical valuation by the Congress and the Commission will result in utter failure.

The *prima facie* effect of the tentative and final valuations was deliberately adopted by the Congress after full debate.

The tentative valuation deprives no carrier of a constitutional right.

It is enough that the carrier shall have the right to protest the tentative valuation and to introduce new evidence as against a final valuation when the latter becomes relevant in court proceedings. If limited to that right the carrier is not without due process of law. *Meeker v. Lehigh Valley R. R. Co.*, 236 U. S. 412; *Mills v. Lehigh Valley R. R. Co.*, 238 U. S. 473.

If the "tentative valuation" declared by the Commission is justiciable within the meaning of the Commerce

Court Act, then the jurisdiction of the District Court is exclusive. The provisions of the Commerce Court Act and those of the Valuation Act for judicial review may not stand together; one or the other must fall. Congress did not intend any such conflict.

Mr. P. J. Farrell for the Interstate Commerce Commission.

The facts pleaded are not sufficient to entitle petitioners to relief in equity.

The order of March 28, 1923, is simply an interlocutory order of the Commission, with which the Court will not interfere under the circumstances disclosed by the record in this case. *Lane v. Mickadiet*, 241 U. S. 201; *Interstate Commerce Comm. v. Humboldt S. S. Co.*, 224 U. S. 474.

The questions presented for determination by the petition are not covered by the general equity jurisdiction of the court, because they are involved in and depend upon the provisions of the Interstate Commerce Act. *Procter & Gamble Co. v. United States*, 225 U. S. 282.

The petition does not show that appellants will suffer legal injury or be harmed in any way if the relief asked for by the petition is not granted.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

Appellants are proprietors of the railroads which make up the system now operated by The Delaware and Hudson Company. Purporting to proceed as required by § 19a, Interstate Commerce Act, as amended, (Acts of March 1, 1913, c. 92, 37 Stat. 701; February 28, 1920, c. 91, 41 Stat. 456, 493; June 7, 1922, c. 210, 42 Stat. 624) the Interstate Commerce Commission, on March 28, 1923, declared tentative valuations of the properties which the several companies owned June 30, 1916, and allowed thirty days from April twelfth for protests.

Elaborate protests were duly presented. Before they were acted upon appellants began this proceeding—June 13, 1923—wherein they claim that defects in the valuation order prevented them from adequately protecting their rights by protests, and pray that it be annulled. The petition states that the commission refused to investigate, ascertain and report many facts relative to values as required by the statute; refused to investigate, ascertain and report concerning properties used by The Delaware and Hudson Company for purposes of a common carrier; refused to apply to inventories prices existing and current on June 30, 1916; omitted to report analyses of the methods employed for ascertaining values, costs, etc.; also omitted to investigate and report the amount of working capital actually used for purposes of common carriers.

Upon motion the petition was dismissed for want of equity, and the matter is here by direct appeal.

Section 19a of the Interstate Commerce Act, as amended, provides—

“(a) That the commission shall, as hereinafter provided, investigate, ascertain, and report the value of all the property owned or used by every common carrier subject to the provisions of this Act. . . .

“(b) First. In such investigation said commission shall ascertain and report in detail as to each piece of property, other than land, owned or used by said common carrier for its purposes as a common carrier, the original cost to date, the cost of reproduction new, the cost of reproduction less depreciation, and an analysis of the methods by which these several costs are obtained, and the reason for their differences, if any. The commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, and an analysis of the methods of valuation employed, and of the reasons for any differences

between any such value and each of the foregoing cost values.

"Second. Such investigation and report shall state in detail and separately from improvements the original cost of all lands, rights of way, and terminals owned or used for the purposes of a common carrier, and ascertained as of the time of dedication to public use, and the present value of the same.

"Third. Such investigation and report shall show separately the property held for purposes other than those of a common carrier, and the original cost and present value of the same, together with an analysis of the methods of valuation employed.

"(f) Upon the completion of the valuation herein provided for the commission shall thereafter in like manner keep itself informed of all extensions and improvements or other changes in the condition and value of the property of all common carriers, and shall ascertain the value thereof, and shall from time to time revise and correct its valuations, showing such revision and correction classified and as a whole and separately in each of the several States and Territories and the District of Columbia, which valuations, both original and corrected, shall be tentative valuations and shall be reported to Congress at the beginning of each regular session.

"(h) Whenever the commission shall have completed the tentative valuation of the property of any common carrier, as herein directed, and before such valuation shall become final, the commission shall give notice by registered letter to the said carrier, the Attorney General of the United States, the governor of any State in which the property so valued is located, and to such additional parties as the commission may prescribe, stating the valuation placed upon the several classes of property of said carrier, and shall allow thirty days in which to file

a protest of the same with the commission. If no protest is filed within thirty days, said valuation shall become final as of the date thereof.

"(i) If notice of protest is filed the commission shall fix a time for hearing the same, and shall proceed as promptly as may be to hear and consider any matter relative and material thereto which may be presented in support of any such protest so filed as aforesaid. If after hearing any protest of such tentative valuation under the provisions of this Act the commission shall be of the opinion that its valuation should not become final, it shall make such changes as may be necessary, and shall issue an order making such corrected tentative valuation final as of the date thereof. All final valuations by the commission and the classification thereof shall be published and shall be prima facie evidence of the value of the property in all proceedings under the Act to regulate commerce as of the date of the fixing thereof, and in all judicial proceedings for the enforcement of the Act approved February fourth, eighteen hundred and eighty-seven, commonly known as 'the Act to regulate commerce,' and the various Acts amendatory thereof, and in all judicial proceedings brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission."

The "tentative valuation" of the statute is no more than an *ex parte* appraisal without probative effect. By the authorized "protest" the carrier may offer objections to anything done or omitted in respect thereof and secure the commission's rulings before the valuation becomes final. Prior to the present proceeding protests, raising the very issues now tendered, had been made and were awaiting action. There is nothing to indicate that the commission wilfully disregarded the law as honestly interpreted or failed to proceed in an orderly manner, or that it will not consider and pass upon all the

matters set up in the protest and repeated here. Pending further action by it the tentative valuation will not become final and no proceedings thereon can be taken. Under the circumstances disclosed appellants must pursue the remedy provided by the statute and give the Commission opportunity to take final action before they can properly ask interposition by the courts.

The decree below is

Affirmed.

MR. JUSTICE BUTLER took no part in the consideration or decision of this cause.